

The Senate

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Select Committee on Regional and  
Remote Indigenous Communities

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Indigenous Australians, Incarceration and the  
Criminal Justice System

Discussion paper prepared by the committee  
secretariat

March 2010

## Executive summary

Indigenous people in Australia experience much higher rates of contact with the criminal justice system than non-Indigenous people. Data on police proceedings against alleged offenders suggests an offending rate by Indigenous people of approximately 1 in 10, compared to 1 in 79 for the non-Indigenous population, though this figure does not include data from all states.

What is certain is that Indigenous adults in Australia are almost 14 times more likely to be imprisoned than non-Indigenous people, and the gap continues to grow. Indigenous adults are imprisoned at a rate of 2308 per 100 000. Put another way, 1 in 43 Indigenous adults is currently in prison. 25 per cent of prisoners in Australia are Indigenous.

Nine out of ten Indigenous prisoners are male. Almost half of Indigenous prisoners are under the age of 30. Nationally, 1 in 15 Indigenous men aged between 25 and 29 are in jail. The most common offence by Indigenous prisoners is 'acts intended to cause injury' (32 per cent). On average, Indigenous prisoners receive shorter sentences than non-Indigenous prisoners for the same crime.

The detention rate for Indigenous juveniles is 397 per 100 000, which is 28 times higher than the rate for non-Indigenous juveniles. In 2007, Indigenous juveniles accounted for 59 per cent of the total juvenile detention population. There is a strong link between juvenile offending and adult offending.

Indigenous people are more likely to re-offend following release from prison, with one study finding that 55 per cent of prisoners returned to prison within two years. 75 per cent of Indigenous prisoners have served a prior prison sentence, suggesting a pattern of repeat offending.

Violence is a common feature of Indigenous offending, with a commensurate level of violent victimisation of Indigenous people. Indigenous people were 12.5 times more likely to be hospitalised as the result of a violent assault than non-Indigenous people. Rates of hospitalisation as the result of spousal assault are 35 times higher in the Indigenous population. Interviews with violent offenders suggest that the normalisation of violence at an early age is a contributing factor. Other possible explanations include social inequality, alcohol, mental health issues and the role of violence in traditional culture.

Alcohol abuse is often linked to violent offending. In three quarters of Indigenous homicides, both the offender and victim had been drinking. Various studies have indicated that a majority of Indigenous prisoners were under the influence of alcohol at the time of their offence. In terms of alcohol consumption, there are both more abstainers and high risk drinkers in the Indigenous population.

High rates of mental health problems and unemployment are also risk factors for offending, as are low rates of educational attainment and income. Some authors also

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posit that the history of colonialism and discrimination has led to an alienation of Indigenous communities with regards to the criminal justice system.

In addition to high rates of offending by Indigenous people, it would appear that the response from the criminal justice system has become more severe over time. The increase in Indigenous imprisonment rates in NSW over the last eight years is mostly due to a declining propensity to grant bail and an increased propensity to impose custodial sentences and to impose longer custodial sentences rather than an increase in the rate of offending.

The trend towards stricter sentencing has also been noted in the UK and the USA. In Australia, elections fought on law and order issues have seen the introduction of mandatory sentencing, zero tolerance policing and other strengthening of criminal justice policy. This may partially explain the increase in Indigenous imprisonment rates, particularly as tougher policies are likely to impact more heavily on Indigenous offenders as they generally have a more extensive existing criminal record.

Increasing levels of imprisonment represent a burden on the Australian taxpayer. Nationally, the average cost of keeping an adult in prison for a year, including capital costs, is approximately \$100 000. The figure is likely to be significantly higher for juveniles in detention. This represents an opportunity cost that offers considerable scope for investment in innovations in criminal justice policy and programs aimed at reducing offending, re-offending and imprisonment. Calls for such a reinvestment featured in the Aboriginal and Torres Strait Islander Social Justice Commissioner's 2009 Social Justice Report.

International and domestic research points to programs that address the causes of offending. A commonly referenced approach is to target 'criminogenic needs' - thinking and behaviour deficits that are likely to lead to further criminal behaviour. This might include pro-criminal attitudes, criminal associates, substance abuse, anti-social personality and hostility or anger.

Other principles for successful programs include intense and lengthy delivery, tailoring of programs to the individual, coherent continuation of treatments in the community following release, use of existing social networks and regular evaluation of program outcomes.

Commonly lauded programs include multi-systemic therapy, where a team of counsellors assess and improve various aspects of a juvenile's life, alcohol and drug abuse programs and cognitive behavioural therapy that seeks to change behavioural and thinking patterns.

This paper outlines a number of programs that are run by Commonwealth, state and territory governments. The Commonwealth and each state and territory government has completed a survey of the specific courts for Indigenous offenders in each jurisdiction; non custodial sentencing options; custodial rehabilitation and therapeutic correctional programs and post release programs for Indigenous offenders. These programs are examples of current initiatives on the ground.

However, there is a lack of research into and evaluation of programs for Indigenous and non-Indigenous people alike. Many programs are designed overseas and are yet to be trialled and/or evaluated for Indigenous offenders. Many of the programs being run by state and territories suffer from lack of a continuous funding source and/or proper evaluation.

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# Introduction

1.1 This discussion paper has been prepared by the committee secretariat to provide the committee with an overview of Indigenous contact with the criminal justice system in Australia, including the nature of Indigenous offending, and current developments in corrective services.

1.2 The first section reviews current statistics to build a picture of Indigenous contact with the criminal justice system in Australia. Approximately 25 per cent of prisoners in Australia are Indigenous, and this share is increasing over time. The rate of imprisonment for Indigenous adults is 14 times higher than for non-Indigenous adults and the gap is continuing to widen. Indigenous prisoners are overwhelmingly male, with assault being the major offence. Indigenous prisoners generally receive shorter sentences and spend less time on remand, but recidivism is much higher. The figures for juvenile detention are worse. Fifty-nine per cent of the juvenile detention population in 2007 was Indigenous. The rate of detention was 28 times higher than for non-Indigenous juveniles.

1.3 The second section considers some of the reasons for Indigenous overrepresentation. The first part analyses some of the factors that contribute to high rates of Indigenous offending such as violence, alcohol, mental health issues and social disadvantage. The second part examines the response to Indigenous offending by the criminal justice system and finds that increasing imprisonment rates are in part a result of stricter sentencing policies.

1.4 The third section provides information on rehabilitation programs with the potential to reduce offending and recidivism over time. Some of the most promising programs include juvenile treatments such as multi-systemic therapy, adult drug and alcohol programs and post-release support programs. Evidence based principles for successful rehabilitation programs are also presented. This section also includes a discussion of the costs of the criminal justice system in Australia, and the potential for both social and economic benefits as result of innovation in criminal justice.

1.5 Finally, the results of an audit of programs and innovations in the Australian criminal justice system are presented in section four. Each state and territory was asked to provide information on current criminal justice programs and policies in their jurisdiction. There have been a limited number of evaluations undertaken across Australia. Evaluations have been included where available.



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## Statistical overview of Indigenous imprisonment

1.6 This section includes data from the Australian Bureau of Statistics (ABS), the Productivity Commission, the Australian Institute of Health and Welfare (AIHW) and various academic studies.

1.7 The ABS 'Prisoners in Australia' catalogue provides extensive information about Australia's prison population, including imprisonment rates, offence profiles, sentence lengths, remand duration, age, gender and prior imprisonment history. This information is reproduced in graphs below. ABS prisoner data is supplemented with information on community-based corrections, juvenile detention and recidivism.

1.8 The ABS 'Recorded Crime – Offenders' catalogue, first released for the 2007–08 period, provides national data on alleged offending drawn from the administrative records of state and territory police agencies. Separate data for Indigenous offenders is only available for New South Wales, Queensland, South Australia and the Northern Territory.

1.9 The National Aboriginal and Torres Strait Islander Social Survey (NATSISS) is another source of information, and includes arrest rates and other data not covered in annual collections of the ABS. Unfortunately, the latest relevant NATSISS data is from 2002. Results on criminal justice collected in 2008 will be released some time in 2010.

1.10 The assorted data suggests that most Indigenous offenders are male and relatively young. Violent offending is common, with almost a third of prisoners serving time for assault. Indigenous offenders receive shorter prison sentences on average. Three quarters of Indigenous prisoners have previously served time in prison and various studies indicate high levels of re-offending.

### Offending rates

1.11 It is difficult to collect accurate data on offending across Australia, as some offending no doubt goes unreported. Similarly, it not possible to automatically classify an alleged offender as innocent or guilty. This section uses data collected by police agencies on instances where police have proceeded against alleged offenders. Police proceedings include a formal charge, diversion or caution. The Australian Bureau of Statistics draws on these data collections to count the number of discreet individuals who are 'proceeded against' by police each year, which is used to establish a national offending rate of 1823 alleged offenders per 100 000 in 2008–09.<sup>1</sup>

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1 Australian Bureau of Statistics (ABS), *Recorded Crime – Offenders, 2008–09*, Catalogue 4519.0, March 2010

1.12 Separate Indigenous data is only available for New South Wales, Queensland, South Australia and the Northern Territory. This data is reliant on correct identification of Indigenous status in police statistics, which introduces a further margin of error. For instance, it excludes cases where police proceeded by way of summons or penalty/infringement notice as this process often does not require self-identification of Indigenous status.<sup>2</sup> Bearing in mind data limitations, police proceeded against alleged Indigenous offenders at a rate of 7669 per 100 000 in New South Wales, 10 858 in Queensland, 14 404 in South Australia and 8623 in the Northern Territory.<sup>3</sup>

1.13 If these rates are aggregated and weighted for the Indigenous population in each jurisdiction, the suggested overall offending rate is 9496 per 100 000, or almost 1 in 10.<sup>4</sup> By comparison, the similarly constructed statistic for the non-Indigenous population suggests an overall alleged offending rate of 1261 per 100 000 or 1 in 79.<sup>5</sup> The inclusion of data from Western Australia, Victoria, Tasmania and the Australian Capital Territory would improve the accuracy of this figure.

### **Arrest rates**

1.14 The ABS NATSISS survey in 2002 found that the proportion of the Indigenous population that had been arrested in the last 5 years was 16 per cent. This represented a fall from 20 per cent in 1994. Males were far more likely to report that they had been arrested (24 per cent) compared to females (9 per cent). Around 70 per cent of those who reported they had been arrested in the last 5 years were male.<sup>6</sup>

1.15 The NATSISS survey data relies on reporting by survey recipients, and as such may be less reliable than the data on alleged offending and imprisonment rates.

### **Imprisonment rates**

1.16 Statistics released by the ABS in December 2009 show that the number of Indigenous people in prison increased by 10 per cent in the 2008–09 financial year. The current rate of imprisonment of Indigenous adults across Australia is 2309 per 100 000, or approximately 1 in 43.

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2 ABS, *Recorded Crime – Offenders, 2008–09*, Catalogue 4519.0, Explanatory Notes.

3 ABS, *Recorded Crime – Offenders, 2008–09*, Catalogue 4519.0, 2010.

4 Secretariat calculation using ABS, *Recorded Crime – Offenders, 2008–09*, Catalogue 4519.0, 2010 and 2006 population data from ABS, *Experimental Estimates and Projections, Aboriginal and Torres Strait Islander Australians*, Catalogue 3238.0, 2009.

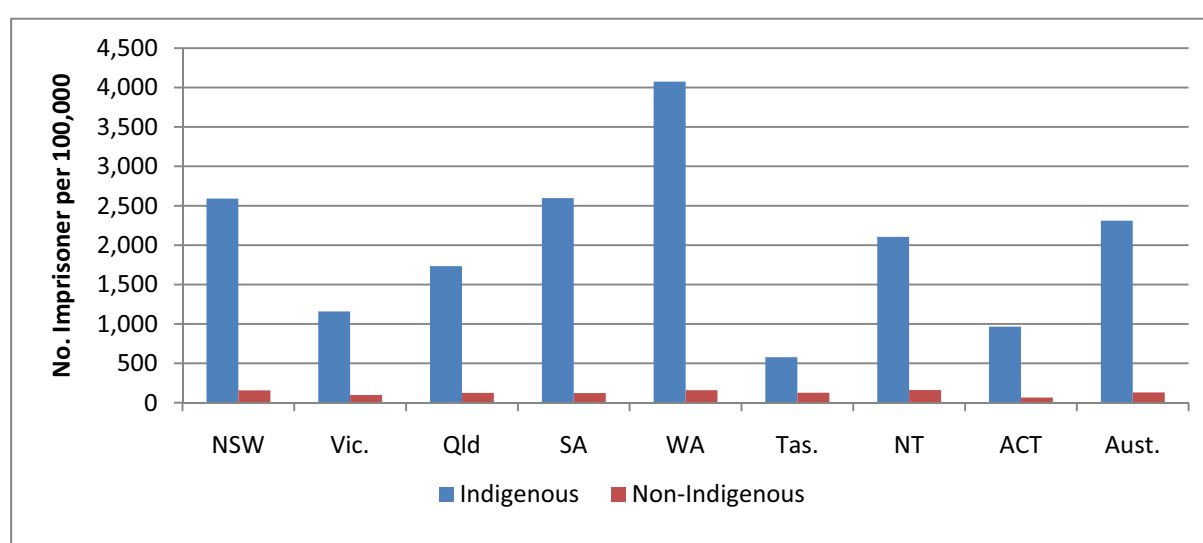
5 Secretariat calculation using ABS, *Recorded Crime – Offenders, 2008–09*, Catalogue 4519.0, 2010 and 2006 population data from ABS, *Experimental Estimates and Projections, Aboriginal and Torres Strait Islander Australians*, Catalogue 3238.0, 2009.

6 ABS, *National Aboriginal and Torres Strait Islander Social Survey 2002*, Catalogue 4714.0, 2004.

1.17 The age standardised rate of imprisonment of Indigenous adults is 14 times higher than non-Indigenous adults.<sup>7</sup> This gap appears to be increasing over time (see Chart 3).<sup>8</sup> Indigenous Australians account for 25.2 per cent of Australia's total prison population despite only being approximately 2.5 per cent of the Australian population.<sup>9</sup> This is an increase from 20 per cent of the total prison population in 1999.<sup>10</sup>

1.18 Chart 1 below shows rates of imprisonment in each state and territory. Western Australia has the highest Indigenous imprisonment rate, followed by South Australia and New South Wales. The overrepresentation of Indigenous adults in prison is, however, universal across jurisdictions.

**Chart 1: Crude imprisonment rates by state and territory, 2008–09<sup>11</sup>**



1.19 Chart 2 shows how the rate of imprisonment has changed over time. The national rate of Indigenous imprisonment (bold line below) increased by 31 per cent between 1999 and 2009. Over this period, the Indigenous imprisonment rate increased

7 Please note that the ABS prepares two versions of the imprisonment rate. The crude rate refers to the number imprisoned per 100 000. The age-standardised imprisonment rate factors in the age profile of the relevant population. Because younger people tend to offend more, a population with a younger age-profile, such as the Indigenous population, will naturally be overrepresented in imprisonment statistics. The age-standardised statistic corrects for this, allowing for more meaningful comparisons between the Indigenous and non-Indigenous populations.

8 A caveat on ABS prison statistics: The ABS notes that these statistics rely on self-identification by prisoners as Indigenous. Any change in the tendency to self-identify could distort the statistics.

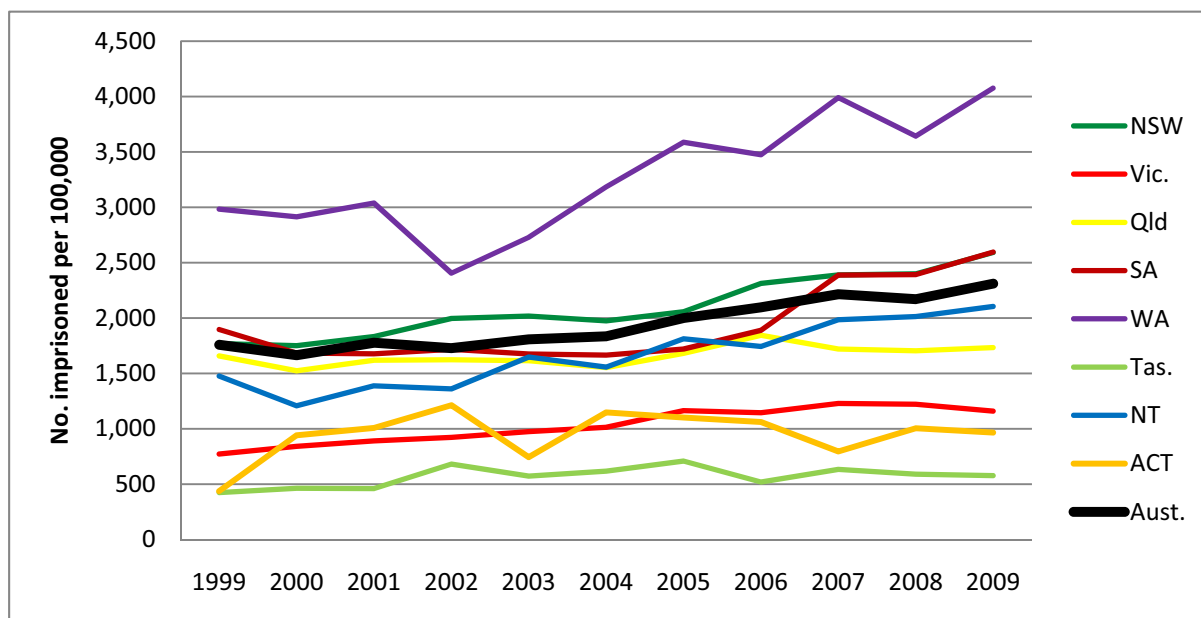
9 ABS, *National Aboriginal and Torres Strait Islander Social Survey 2008*, Catalogue No. 4714.0, October 2009.

10 ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.

11 ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.

significantly (between 36 and 121 per cent) in all jurisdictions except for Queensland, where it remained relatively steady.

**Chart 2: Crude Indigenous imprisonment rates over the last decade<sup>12</sup>**



1.20 The Indigenous imprisonment rate has increased much faster than the non-Indigenous rate. The age-standardised Indigenous rate has increased by 51 per cent since 2000, compared to a 5 per cent increase for the non-Indigenous rate.<sup>13</sup>

1.21 As a result of this, the disparity in rates has increased over the last decade. An Indigenous person in Australia was approximately 10 times more likely to be in prison than a non-Indigenous person in 2000. As mentioned previously, by 2009, they were almost 14 times more likely to be imprisoned than non-Indigenous people.<sup>14</sup>

1.22 The disparity between Indigenous and non-Indigenous imprisonment is greatest in Western Australia and South Australia, but is lowest in Tasmania.

1.23 What is causing the steady increase in Indigenous imprisonment rates? A research paper by Jacqueline Fitzgerald of the NSW Bureau of Crime Statistics and Research examined the increase in NSW. Her research suggests that in NSW, the increase was due to harsher sentencing and increased remand time rather than increased offending.<sup>15</sup>

<sup>12</sup> ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.

<sup>13</sup> Secretariat calculation based on data from ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.

<sup>14</sup> ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009; note this uses the age-standardised statistic for a more meaningful comparison

<sup>15</sup> Fitzgerald, J, *Why are Indigenous imprisonment rates rising?* Issue Paper no. 41, BOCSAR, August 2009.

1.24 The increase in the number of Indigenous prisoners on remand accounted for almost one quarter of the rise in the overall imprisonment rate. The increase in the number of people on remand was due to a larger proportion being refused bail (12.3 per cent in 2001 and 15.4 per cent in 2007). Remand times also increased from an average of 3.3 months in 2001 to 4.2 months in 2008.<sup>16</sup>

1.25 The increase in the number of sentenced Indigenous prisoners accounted for three quarters of the increased rate of imprisonment. Ms Fitzgerald found that in 2001, 16.9 per cent of convicted Indigenous adults received prison sentences, while in 2007 the figure had increased to 20.4 per cent. Similarly, prison sentence lengths increased from 30.4 months to 31.9 months. This did not appear to be the result of changing offending patterns, but changes to the way the criminal justice system treated offenders.<sup>17</sup> This and other reasons for high imprisonment rates are explored further in the next section of this paper.

### **Types of offences committed**

1.26 This section presents data on offence categories based on two main sources: alleged offending statistics recorded by police and imprisonment statistics from corrective service agencies. In general, the data shows the prevalence of assault as both the major category of offence, and the major reason for incarceration. Prison statistics indicate a high proportion of prisoners incarcerated for violent crimes.

#### ***Alleged offending data recorded by police agencies***

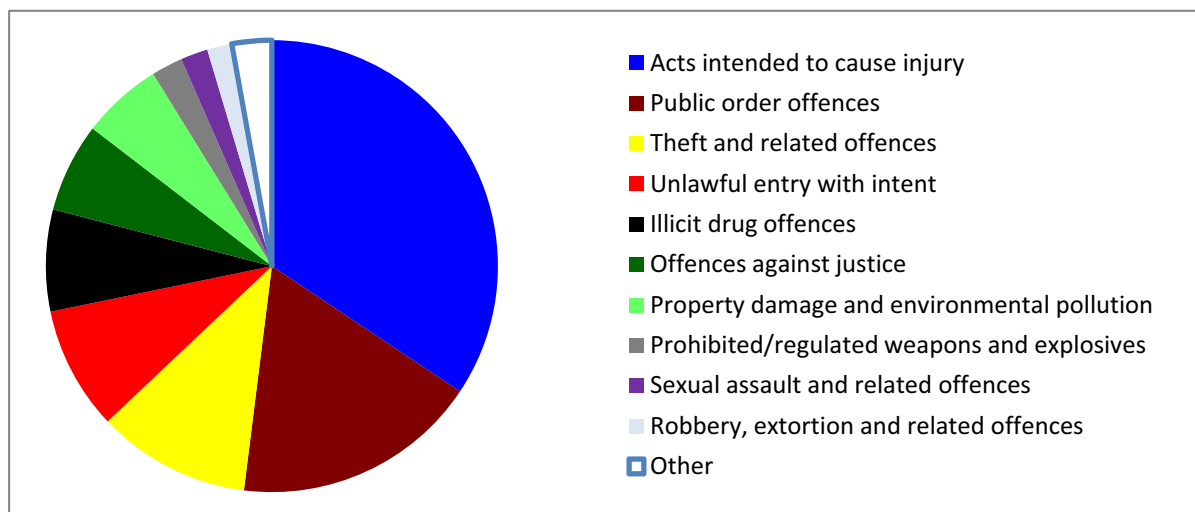
1.27 Police offending data from NSW, Queensland, SA and NT indicate that 'Acts intended to cause injury' (presumed to be mostly assault) constituted approximately 34 per cent of all offences where police proceeded against an alleged offender by way of formal charge, diversion or cautioning etc. Combined with public order offences (18 per cent), these two offence categories accounted for over half of all offences recorded in police statistics. Over 20 per cent of Indigenous individuals proceeded against by police were alleged to have committed a crime involving theft or robbery. Of this figure, theft and related offences made up 11 per cent, unlawful entry with intent, 9 per cent, and robbery, extortion and related offences, 1.8 per cent. It is important to note that these statistics, taken from the ABS *'Recorded Crime – Offenders'* series do not include traffic or vehicle offences, which may constitute a high proportion of offences, particularly in remote locations. They also record individual offenders by most serious offence, meaning less serious offences may be underrepresented in the data.

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16 Fitzgerald, J, *Why are Indigenous imprisonment rates rising?* Issue Paper no. 41, BOCSAR, August 2009.

17 Fitzgerald, J, *Why are Indigenous imprisonment rates rising?* Issue Paper no. 41, BOCSAR, August 2009.

**Chart 3: Alleged Indigenous offending by category, NSW, QLD, SA and NT, 2008-09 (ABS)<sup>18</sup>**



1.28 The data suggests some difference in the overall offending pattern by alleged Indigenous and non-Indigenous offenders. For instance, a greater proportion of Indigenous alleged offenders were proceeded against by police for an act intending to cause injury than non-Indigenous alleged offenders (34 per cent versus 25 per cent), while the opposite was true for illicit drug offences (7 per cent versus 18 per cent). The table below compares the two groups.

**Table 1: Number of alleged offenders by principal offence category: NSW, Qld, SA and NT (2008–09)<sup>19</sup>**

| Principal offence                           | Indigenous    |             | Non-Indigenous |             |
|---------------------------------------------|---------------|-------------|----------------|-------------|
|                                             | Total         | %           | Total          | %           |
| Acts intended to cause injury               | 10,015        | 34.4        | 34,254         | 24.6        |
| Public order offences                       | 5,138         | 17.6        | 19,801         | 14.2        |
| Theft and related offences                  | 3,197         | 11.0        | 20,777         | 14.9        |
| Unlawful entry with intent                  | 2,572         | 8.8         | 5,817          | 4.2         |
| Illicit drug offences                       | 2,122         | 7.3         | 24,856         | 17.9        |
| Offences against justice                    | 1,862         | 6.4         | 8,709          | 6.3         |
| Property damage and environmental pollution | 1,680         | 5.8         | 9,204          | 6.6         |
| Prohibited/regulated weapons and explosives | 653           | 2.2         | 3,449          | 2.5         |
| Sexual assault and related offences         | 567           | 1.9         | 3,109          | 2.2         |
| Other                                       | 1,348         | 4.6         | 9,263          | 6.7         |
| <b>Total</b>                                | <b>29,154</b> | <b>100%</b> | <b>139,239</b> | <b>100%</b> |

18 Secretariat calculations using ABS, *Recorded Crime – Offenders, 2008–09*, Catalogue 4519.0, 2010.

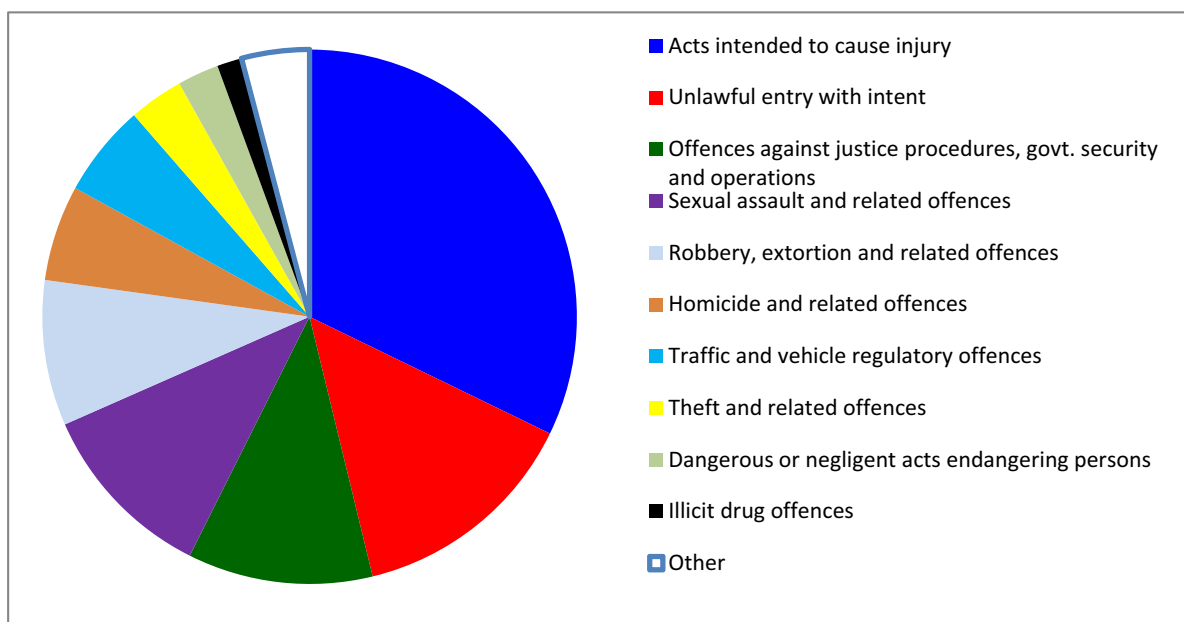
19 Secretariat calculations using ABS, *Recorded Crime – Offenders, 2008–09*, Catalogue 4519.0, 2010; please note that this table excludes offenders with an unknown principal offence.

### ***Prison data***

1.29 The prison statistics corroborate offending data recorded by police, but naturally reflect more serious offence types as these are more likely to attract a prison sentence. In summary, they indicate a high share of violent crimes, with the single highest offence being acts intended to cause injury. Crimes involving theft and robbery constituted between 12 and 26 per cent for males and 18 and 28 per cent for females depending on the measurement used.<sup>20</sup> Compared to the non-Indigenous prison population, Indigenous prisoners were more likely to have been imprisoned for assault and less likely to have been imprisoned for illicit drug offences.

1.30 The following pie charts show the proportion of prisoners imprisoned for each offence category. The data is presented for each gender. Assault is clearly the most common offence, followed by various types of theft and offences against justice procedures.

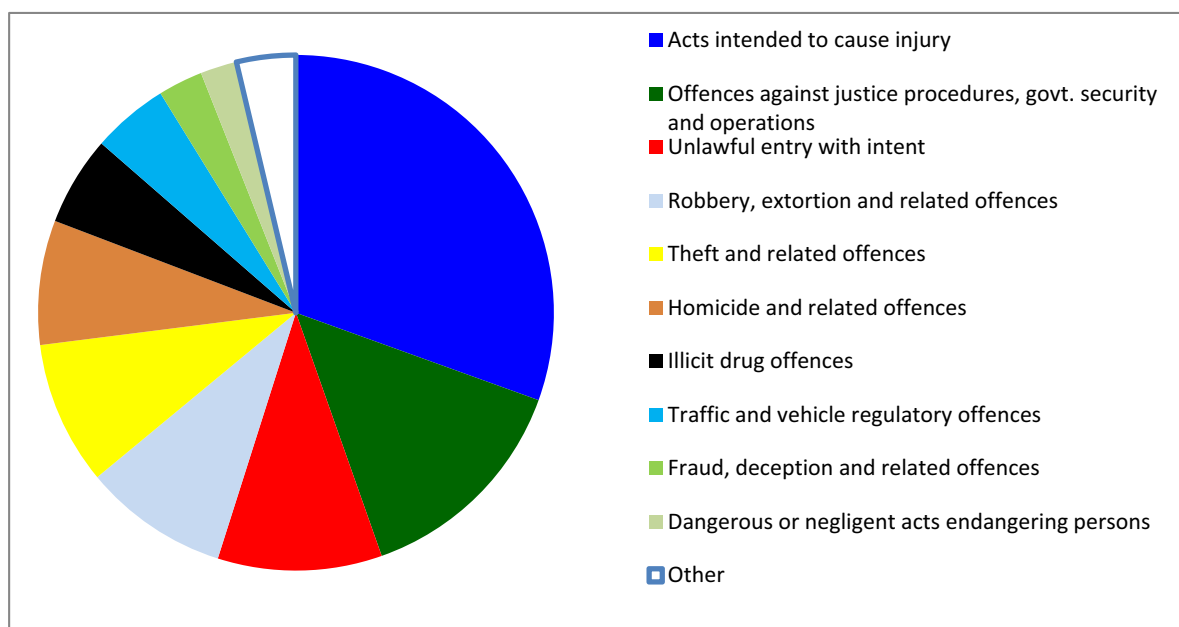
***Chart 4: Indigenous male offending by most serious offence (ABS)<sup>21</sup>***



20 A range is given because the category of unlawful entry with intent does not discriminate between home burglary and forceful entry into a house with the intent to commit a crime other than property theft.

21 ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.

**Chart 5: Indigenous female offending by most serious offence (ABS)<sup>22</sup>**



1.31 As with the alleged offending data, the charts above only display the most serious offence for which a prisoner has been imprisoned. Where a prisoner is imprisoned for multiple crimes, only the most serious is indicated. This means that lesser misdemeanours may be underrepresented.

1.32 A breakdown of the offences included in each category can be found at Appendix 1.

1.33 It is clear from the offence profiles above that the majority of Indigenous adult prisoners are imprisoned for acts intended to cause injury (mainly assault). This is true for both males and females (32 and 31 per cent respectively). Unlawful entry with intent (which includes burglary and break and enter) is a common offence, representing 14 per cent for males and 10 per cent for females.

1.34 Offences against justice procedures is also a major offence category (11 per cent for males and 14 per cent for females). Offences against justice procedures include breaches of custodial orders, community-based orders or violence and non-violence orders. In addition, the category includes offences against government operations, government security and justice procedures. It is worth noting the comments of Dr Don Weatherburn, at the committee's hearing in Sydney on 15 October, 2009, when he stated that non-custodial sentencing options were often merely a rung on the ladder to imprisonment. The high number of people imprisoned for breaching court orders reinforces his point.

1.35 Eleven per cent of the male Indigenous prison population was imprisoned for sexual assault and related offences. About nine per cent of prisoners of both genders

22 ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.



were imprisoned for robbery, extortion and related offences. The share for homicide and related offences (including murder, attempted murder, manslaughter and driving causing death) was six per cent.

1.36 There are some stark differences in offence types between the Indigenous and non-Indigenous prison populations. These are presented in Table 1 below.

**Table 2: Comparison of Indigenous and Non-Indigenous prisoners by offence type<sup>23</sup>**

| Offence type                                                       | Indigenous   |              | Non-Indigenous |              | Difference |
|--------------------------------------------------------------------|--------------|--------------|----------------|--------------|------------|
|                                                                    | no.          | %            | no.            | %            |            |
| Homicide and related offences                                      | 441          | 6.0          | 2,256          | 10.5         | -4.5       |
| Acts intended to cause injury                                      | 2,365        | 32.0         | 3,203          | 14.9         | 17.1       |
| Sexual assault and related offences                                | 747          | 10.1         | 2,837          | 13.2         | -3.1       |
| Dangerous or negligent acts endangering persons                    | 183          | 2.5          | 392            | 1.8          | 0.7        |
| Abduction, harassment and other offences against the person        | 52           | 0.7          | 229            | 1.1          | -0.4       |
| Robbery, extortion and related offences                            | 650          | 8.8          | 2,104          | 9.8          | -1.0       |
| Unlawful entry with intent                                         | 1,010        | 13.7         | 2,183          | 10.1         | 3.6        |
| Theft and related offences                                         | 280          | 3.8          | 993            | 4.6          | -0.8       |
| Fraud, deception and related offences                              | 43           | 0.6          | 807            | 3.7          | -3.1       |
| Illicit drug offences                                              | 138          | 1.9          | 2,987          | 13.9         | -12.0      |
| Prohibited and regulated weapons and explosives offences           | 39           | 0.5          | 233            | 1.1          | -0.6       |
| Property damage and environmental pollution                        | 83           | 1.1          | 283            | 1.3          | -0.2       |
| Public order offences                                              | 73           | 1.0          | 138            | 0.6          | 0.4        |
| Traffic and vehicle regulatory offences                            | 408          | 5.5          | 997            | 4.6          | 0.9        |
| Offences against justice procedures, govt. security and operations | 845          | 11.4         | 1,643          | 7.6          | 3.8        |
| Miscellaneous offences                                             | 25           | 0.3          | 248            | 1.2          | -0.9       |
| Unknown                                                            | 4            | 0.1          | 21             | 0.1          | 0.0        |
| <b>Total</b>                                                       | <b>7,386</b> | <b>100.0</b> | <b>21,554</b>  | <b>100.0</b> |            |

1.37 The most obvious difference is in the share of acts intended to cause injury (assault etc.). The share of Indigenous people in prison for acts intended to cause injury was more than twice as large as the non-Indigenous share (32 per cent versus 15 per cent). By contrast, a much smaller percentage of the Indigenous prison population was sentenced or charged with illicit drug offences than the non-Indigenous population (1.9 per cent versus 13.9 per cent).

1.38 A smaller share of the Indigenous prison population was imprisoned for homicide and related offences, sexual assault and related offences and fraud, deception and related offences compared to non-Indigenous prisoners. A larger share

was imprisoned for unlawful entry with intent and offences against justice procedures, government security and operations.

**Table 3: Changing offence patterns over time—Number and proportion of prisoners by offence category (2000 & 2009)**<sup>24</sup>

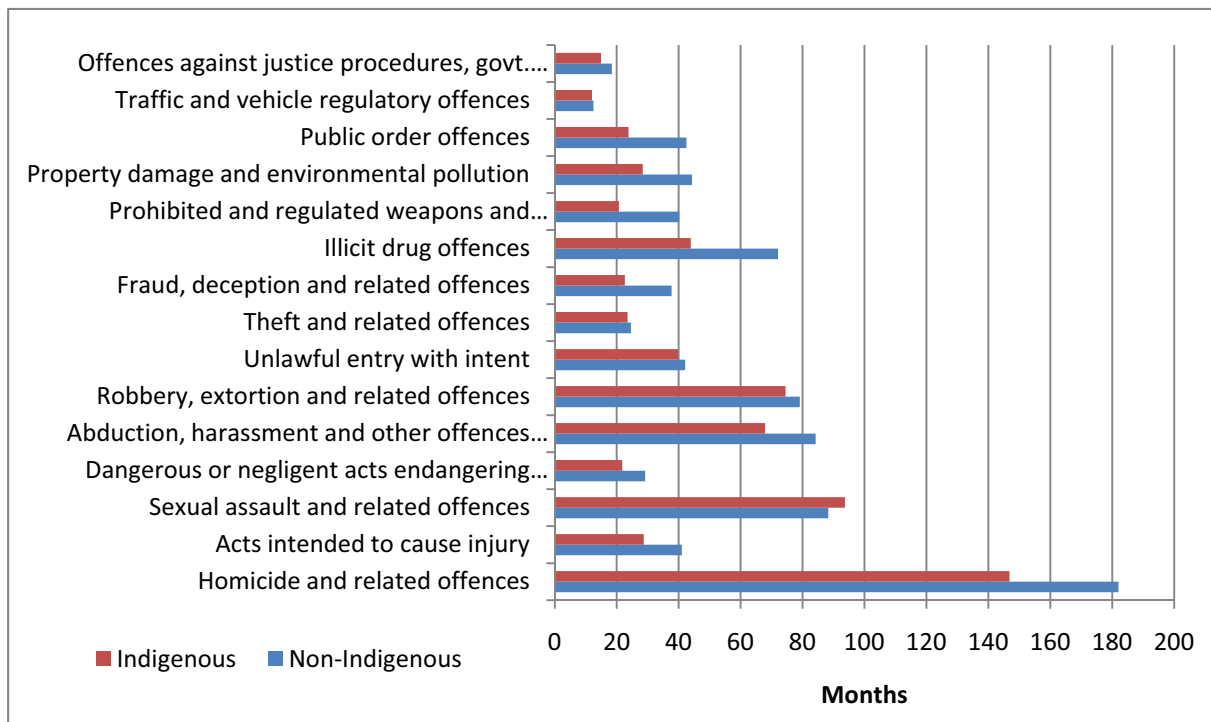
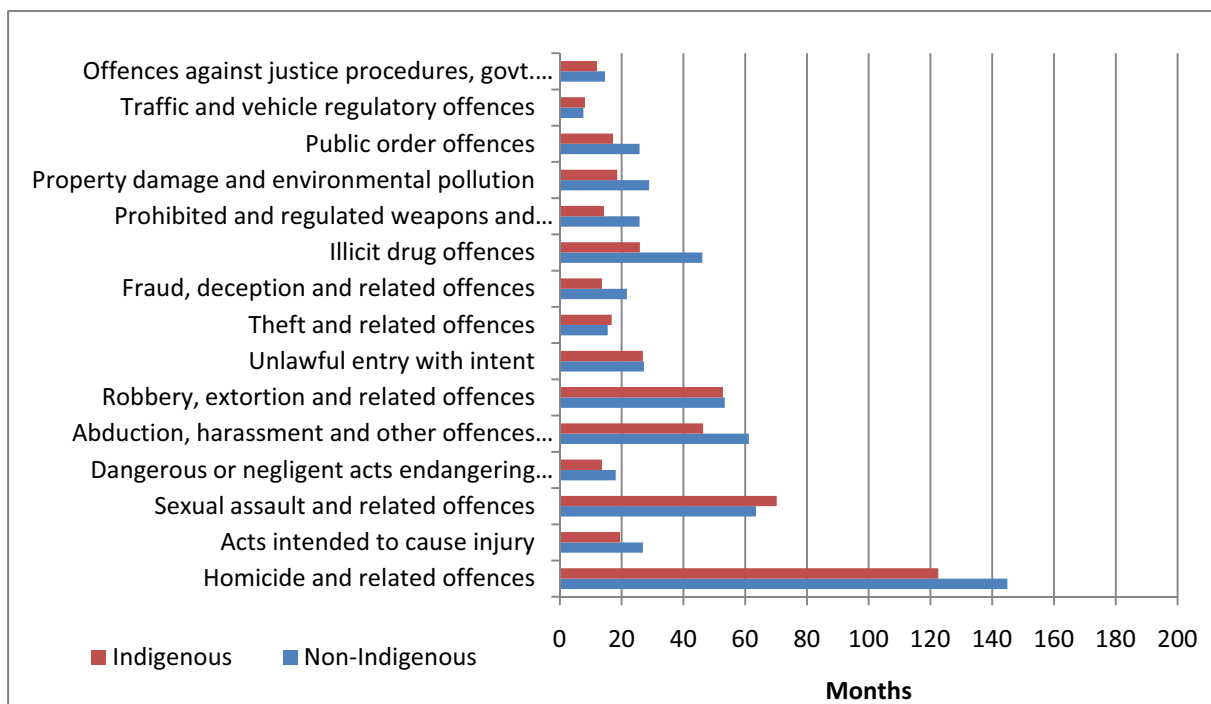
| 2000                                            |     |     | 2009  |     |                                                                    |
|-------------------------------------------------|-----|-----|-------|-----|--------------------------------------------------------------------|
| Offence Category                                | no. | %   | no.   | %   | Offence Category                                                   |
| Assault                                         | 939 | 23% | 2,181 | 32% | Acts intended to cause injury                                      |
| Break and enter                                 | 553 | 14% | 948   | 14% | Unlawful entry with intent                                         |
| Robbery                                         | 490 | 12% | 595   | 9%  | Robbery, extortion and related offences                            |
| Sex offences                                    | 414 | 10% | 743   | 11% | Sexual assault and related offences                                |
| Government security/justice procedures offences | 385 | 9%  | 760   | 11% | Offences against justice procedures, govt. security and operations |
| Road traffic offences                           | 380 | 9%  | 379   | 6%  | Traffic and vehicle regulatory offences                            |
| Homicide                                        | 303 | 7%  | 394   | 6%  | Homicide and related offences                                      |
| Other theft                                     | 257 | 6%  | 226   | 3%  | Theft and related offences                                         |
| Property damage/environmental offences          | 91  | 2%  | 77    | 1%  | Property damage and environmental pollution                        |
| Drug offences                                   | 64  | 2%  | 104   | 2%  | Illicit drug offences                                              |
| Other                                           | 218 | 5%  | 376   | 5%  | Other                                                              |

1.39 It is difficult to compare offences over time as the categorisation of offence types has changed in the last decade. The table above should thus be used as a guide only. However, it would appear that the share of assault in the overall pattern of offending by Indigenous prisoners has increased over the last decade. Comparable national data on police proceedings against alleged offenders is not available to confirm this conclusion. The number of prisoners serving time for assault has more than doubled in ten years, to the extent that assault is analogous for 'acts intending to cause injury'. This may be the result of either increased assault rates or an increased tendency of courts to impose custodial sentences for that offence.

## Sentence lengths

1.40 Statistics collected by the ABS indicate that Indigenous prisoners tend to receive shorter prison terms than their non-Indigenous counterparts for almost all crimes. The charts below compare average sentence lengths and expected time to serve for both Indigenous and non-Indigenous offenders. Sentence length refers to the nominal sentence imposed by a court, disregarding release for good behaviour and other types of parole. Expected time to serve is a more accurate indicator of time spent in prison as it includes information on early release and parole.

24 ABS, *Prisoners in Australia*, Catalogue 4517.0, various issues.

**Chart 6: Average sentence lengths by offence<sup>25</sup>****Chart 7: Average expected time to serve<sup>26</sup>**

25 ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.

26 ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.

1.41 On average, Indigenous sentences are 28 per cent shorter than non-Indigenous sentences. However, the difference is less pronounced for the expected time to serve. The expected time to serve for each category of crime is, on average, 20 per cent shorter for Indigenous prisoners.

1.42 There are some exceptions to this general trend. In comparison with non-Indigenous prisoners, Indigenous people tend to receive longer sentences for sexual assault and related offences. In terms of average expected time to serve, Indigenous people spend more time in prison for traffic and vehicle regulatory offences and theft and related offences. They also serve similar terms for unlawful entry with intent and robbery, extortion and related offences.

1.43 Willis and Moore note in their study of violent, male, Indigenous prisoners that the Indigenous prisoners were more likely to be released due to sentence expiry than parole, which is corroborated by the data which shows the difference between the average sentence and the average expected time to serve is less for Indigenous prisoners than non-Indigenous.<sup>27</sup>

### **Age and gender**

1.44 Indigenous prisoners are overwhelmingly male (92 per cent). The median age of a male Indigenous prisoner is 30.7, compared to 34.5 for a non-Indigenous male prisoner. The median age of a female Indigenous prisoner is 31.7, compared to 35.5 for non-Indigenous female prisoners. The Indigenous prison population is generally younger, with an average age of 32.1 compared to 36.4.

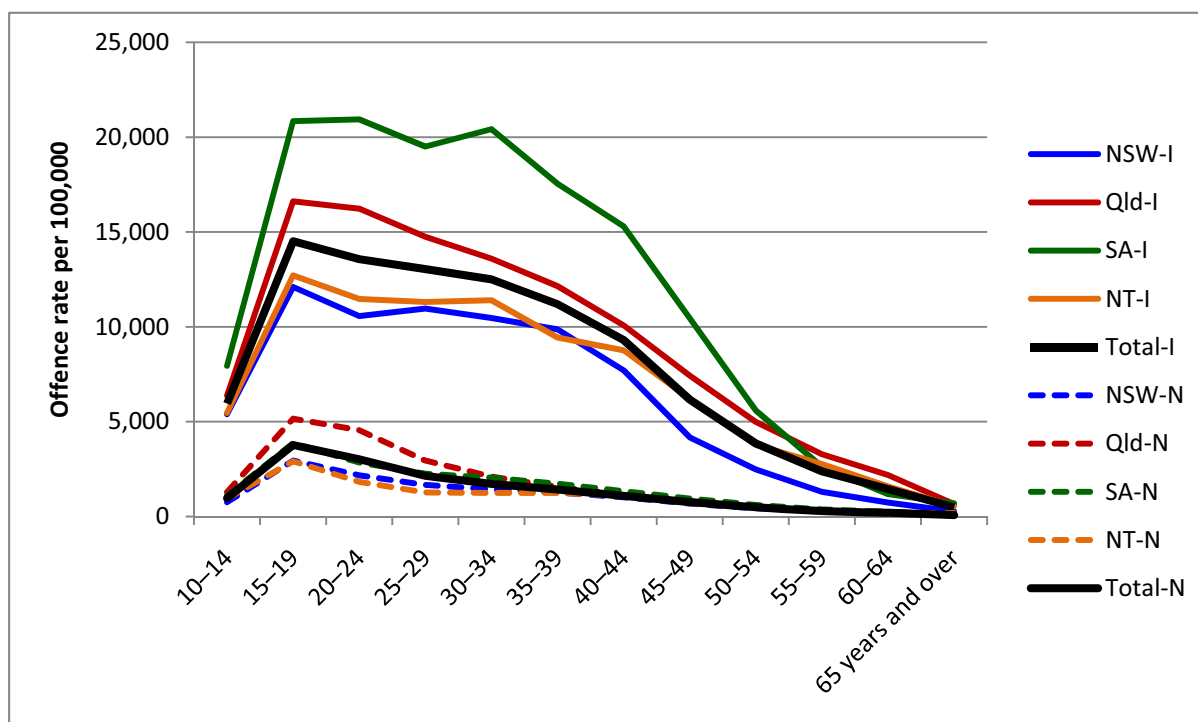
1.45 Offender data in NSW, Queensland, SA and the NT indicate that offending is heavily skewed towards younger age groups, peaking in the 15–19 year old category. This is true of both the Indigenous and non-Indigenous population. The chart below shows offending rates by age bracket for the four jurisdictions which comparable data exists. Notably, the South Australian data indicates that more than 1 in 5 Indigenous youth aged between 15 and 24 had police proceed against them for alleged offending in 2008–09. Weighting the data in line with each jurisdiction's relevant population and aggregating the results suggests an overall Indigenous offending rate across the four jurisdictions of 14 508 per 100 000 in the 15–19 year old age bracket. In comparison, the same statistic for the non-Indigenous population is 3772 per 100 000.<sup>28</sup>

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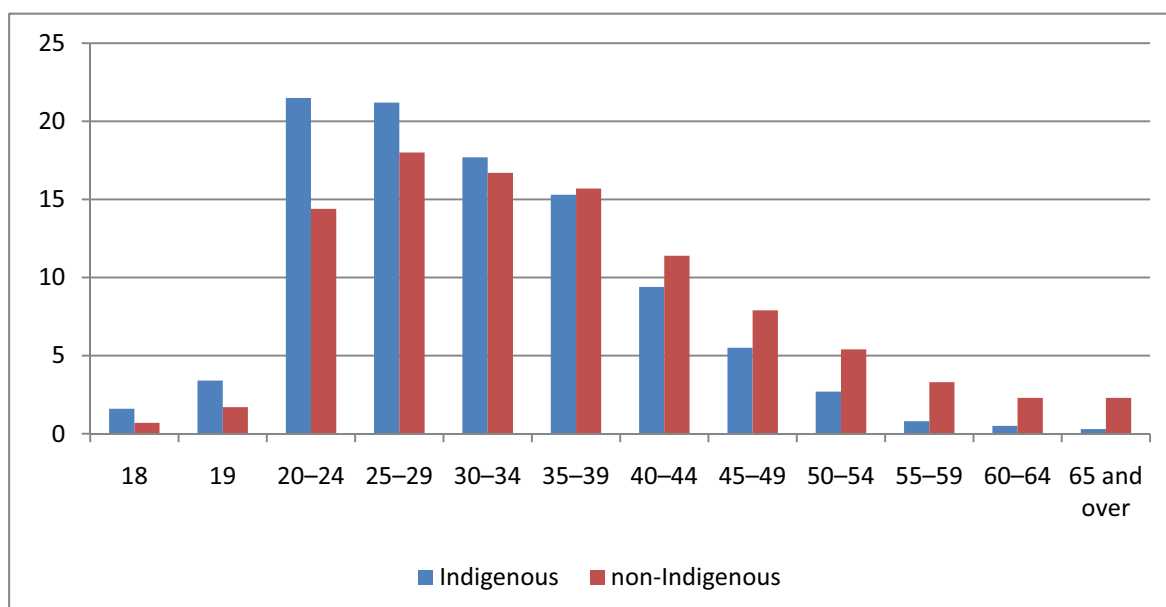
27 Willis and Moore, *Reintegration of Indigenous Prisoners*, AIC Research and Public Policy Series No. 90, 2008.

28 Secretariat calculation using ABS, *Recorded Crime – Offenders, 2008–09*, Catalogue 4519.0, 2010 and 2006 population data from ABS, *Experimental Estimates and Projections, Aboriginal and Torres Strait Islander Australians*, Catalogue 3238.0, 2009.

**Chart 8: Indigenous (I) and non-Indigenous (N) Alleged offending by age bracket, NSW, Qld, SA and NT, 2008–09 (ABS)<sup>29</sup>**



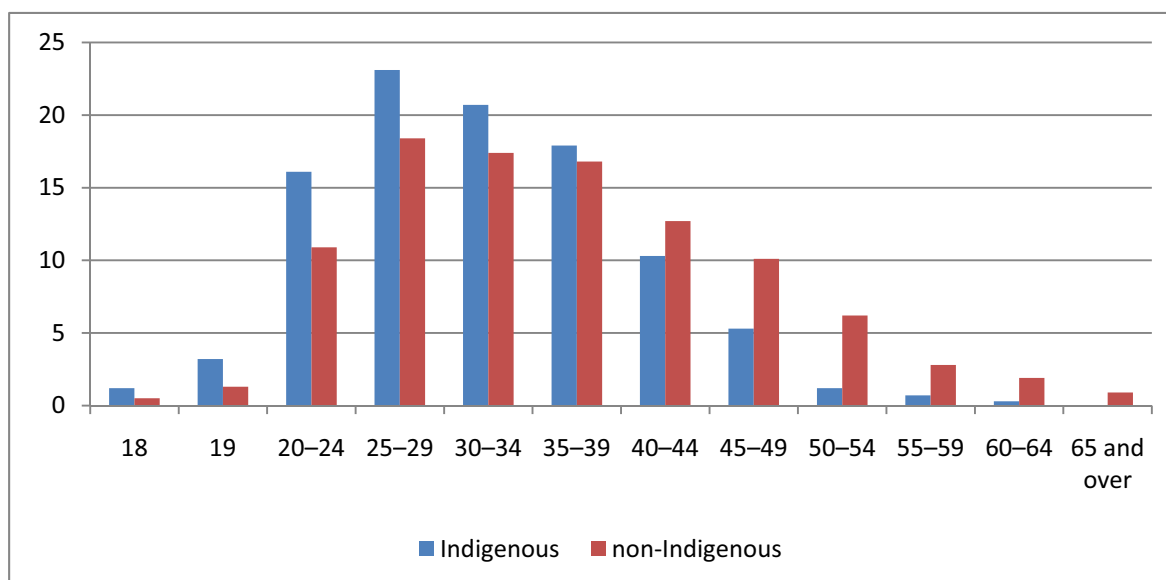
**Chart 9: Male prisoners by age group (per cent, 2009)<sup>30</sup>**



<sup>29</sup> ABS, *Recorded Crime – Offenders, 2008–09*, Catalogue 4519.0, 2010; totals are secretariat calculation.

<sup>30</sup> ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.

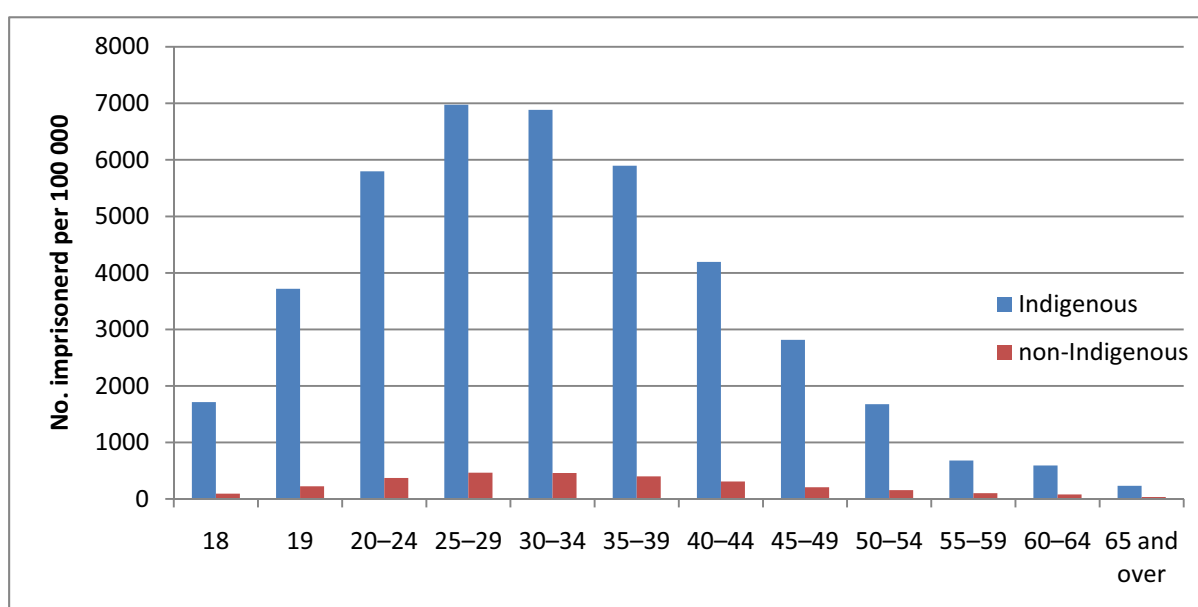
**Chart 10: Female prisoners by age group (per cent, 2009)<sup>31</sup>**



1.46 The charts above compare the age profiles of Indigenous and non-Indigenous prisoners for each gender. They clearly indicate that the Indigenous prison population is generally younger, with 48 per cent of males and 44 per cent of females under the age of 30.

1.47 The imprisonment rates for each age cohort are even more striking, as shown in the charts below.

**Chart 11: Male imprisonment rates by age group (2009)<sup>32</sup>**

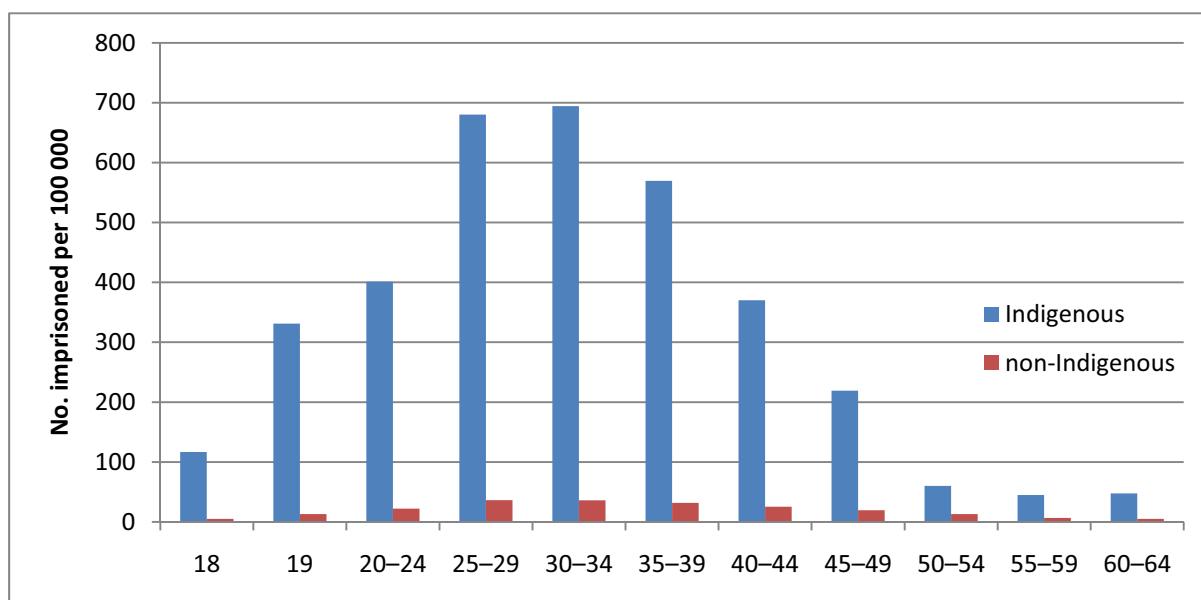


31 ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.

32 ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.

1.48 As the chart above shows, while all Indigenous male age brackets experience an imprisonment rate greater than the non-Indigenous population, males in the 25–29 and 30–34 age brackets are most highly represented. The imprisonment rate for 25–29 year olds is 6975 per 100 000. This equates to approximately 1 in 15 being imprisoned in this age group across Australia.

**Chart 12: Female imprisonment rates by age group<sup>33</sup>**



1.49 Imprisonment rates for women are much lower, but there is still a huge disparity between Indigenous and non-Indigenous rates. Imprisonment rates for Indigenous women peak at a higher age. The most imprisoned age bracket is 30–34, with a rate of 695, or 1 in 143.

1.50 Overall, Indigenous men are imprisoned at a rate of 4230 per 100 000. Indigenous women are imprisoned at a rate of 359 per 100 000.<sup>34</sup>

1.51 The relatively young age of the Indigenous prison population may reflect the lower life expectancy of Indigenous Australians and the younger age profile of the Indigenous population.

### **Remand (unsentenced prisoners)**

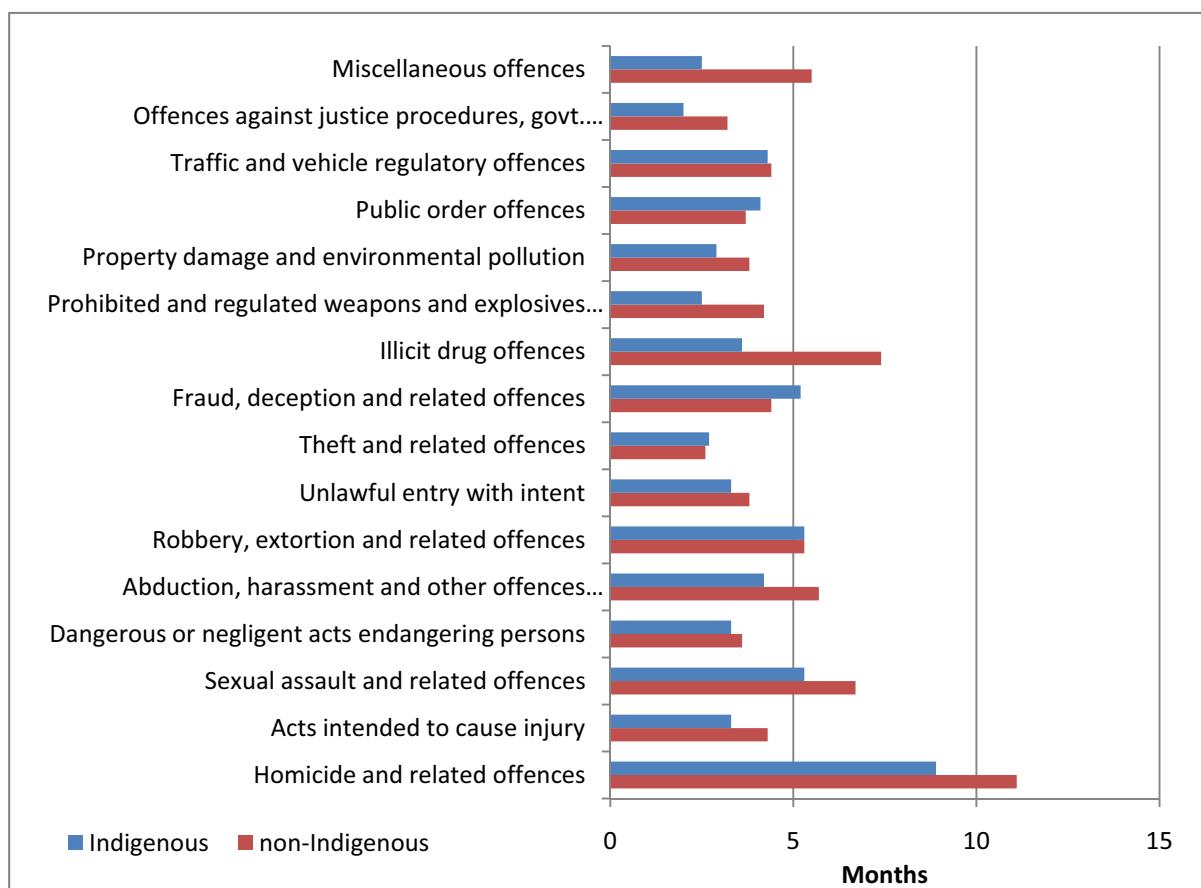
1.52 Prisoners on remand include persons awaiting a court hearing or trial, convicted prisoners awaiting sentencing and persons awaiting deportation. 21.8 per cent of all prisoners in Australia are unsentenced. This figure is roughly the same (21.3 per cent) for Indigenous prisoners.<sup>35</sup>

33 ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.

34 ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.

35 ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.

**Chart 13: Time spent on remand by most serious offence (2009)<sup>36</sup>**



1.53 As with average sentence lengths, Indigenous prisoners generally spend less time on remand, on average, than non-Indigenous prisoners.

### Community-based corrections

1.54 The ABS collects data on community-based corrections, which it defines as community-based management of court-ordered sanctions, post-prison administrative arrangements and fine conversions, which typically involve supervision, programs or community work.

1.55 Table 4 shows the number of Indigenous and non-Indigenous people in community-based corrections and in prison. Altogether, there are almost twice as many people in community-based corrections as in prison. Nationally, approximately 19 per cent of people in community-based corrections identified as Indigenous, compared with 25.2 per cent of prisoners.

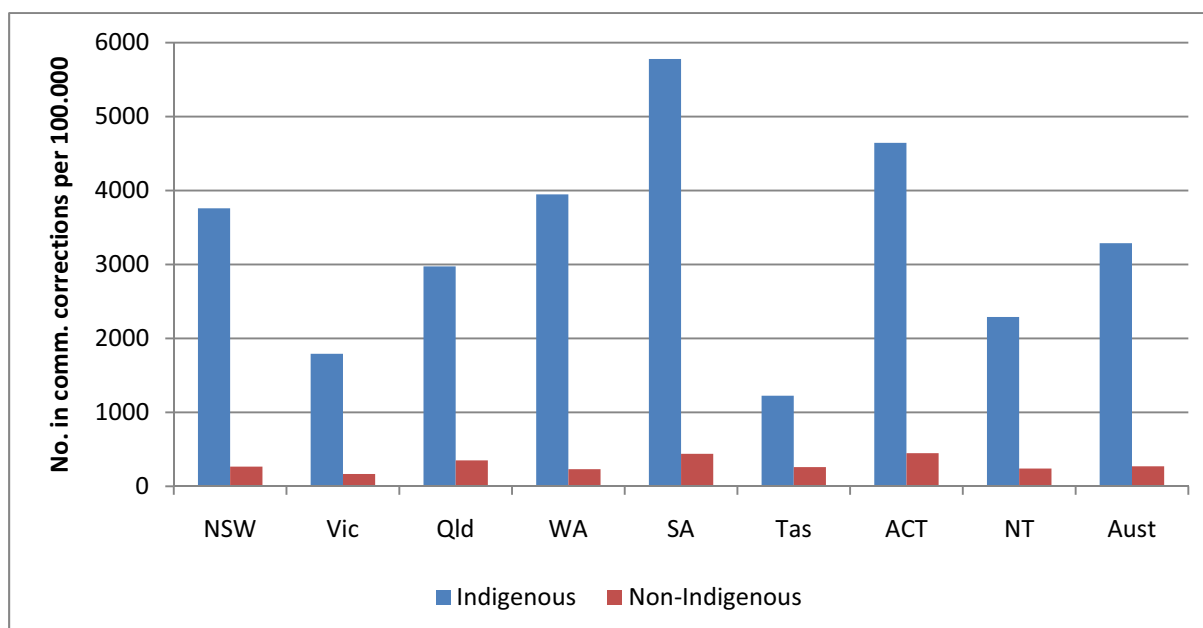
36 ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.



**Table 4: Prisoners versus community-based corrections<sup>37</sup>**

|                             | NSW           | Vic.         | Qld           | SA           | WA           | Tas.         | NT           | ACT          | Aust.         |
|-----------------------------|---------------|--------------|---------------|--------------|--------------|--------------|--------------|--------------|---------------|
| <b>All prisoners</b>        | <b>11,127</b> | <b>4,350</b> | <b>5,667</b>  | <b>1,960</b> | <b>4,419</b> | <b>535</b>   | <b>1,056</b> | <b>203</b>   | <b>29,317</b> |
| Indigenous                  | 2,374         | 241          | 1,576         | 449          | 1,790        | 66           | 864          | 26           | 7,386         |
| % of prisoners              | 21%           | 6%           | 28%           | 23%          | 41%          | 12%          | 82%          | 13%          | 25%           |
| Non-Indigenous              | 8,376         | 4,109        | 4,091         | 1,511        | 2,629        | 469          | 192          | 177          | 21,554        |
| % of prisoners              | 75%           | 95%          | 72%           | 77%          | 60%          | 88%          | 18%          | 87%          | 74%           |
| <b>All Com. Corrections</b> | <b>18,269</b> | <b>8,249</b> | <b>14,339</b> | <b>6,050</b> | <b>5,699</b> | <b>1,247</b> | <b>1,126</b> | <b>1,388</b> | <b>56,366</b> |
| Indigenous                  | 3,144         | 479          | 2,944         | 988          | 1,940        | 163          | 918          | 146          | 10,722        |
| % of Com. Corr.             | 17%           | 6%           | 21%           | 16%          | 34%          | 13%          | 82%          | 11%          | 19%           |
| Non-Indigenous              | 12,716        | 7,998        | 11,912        | 4,927        | 3,563        | 1,103        | 263          | 1,140        | 43,622        |
| % of Com. Corr.             | 70%           | 97%          | 83%           | 81%          | 63%          | 88%          | 23%          | 82%          | 77%           |

1.56 The Productivity Commission publishes a community corrections rate that is similar in nature to the ABS imprisonment rate. The figure for 2007–08 indicates that the national rate for the Indigenous population was 3288.2 per 100 000 adults, compared with 271.1 per 100 000 for non-Indigenous adults. The rate by jurisdiction is shown below.

**Chart 14: Community-based corrections rate by state/territory (2007–08)<sup>38</sup>**

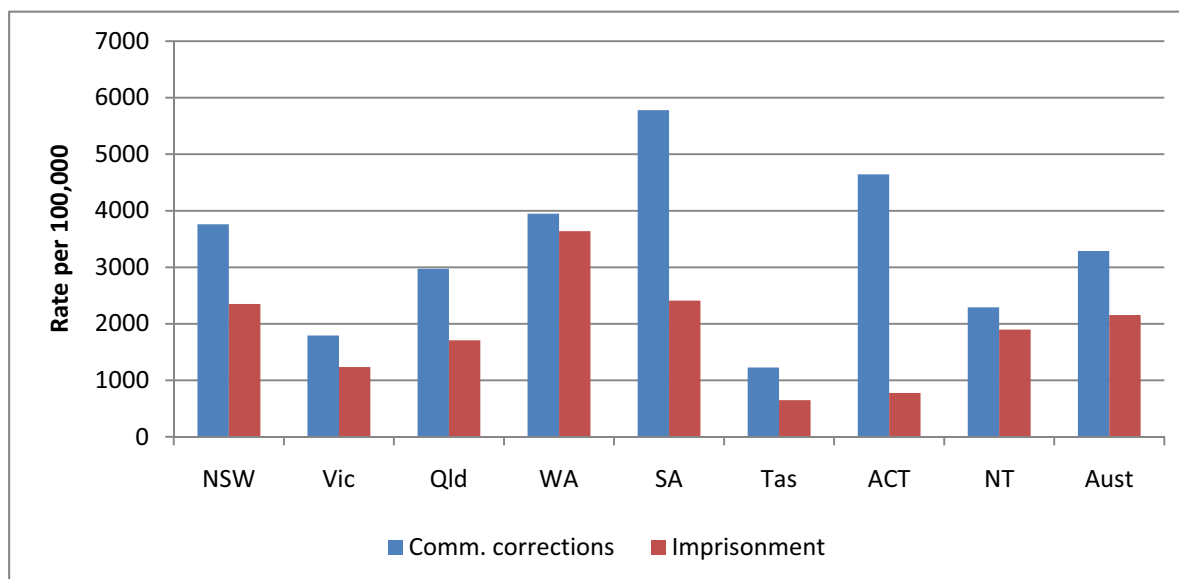
1.57 Note that South Australia has the highest rate, at 5778.5 per 100 000, followed by the ACT, WA and NSW. The pattern of far higher rates of imprisonment for the

37 ABS, *Prisoners in Australia 2009*, Catalogue 4517.0 and *Corrective Services, Australia*, Sept 2009, Catalogue 4512.0; Note that due to the unknown status of some individuals, totals may not add up to 100 per cent.

38 Productivity Commission, *Report on Government Services 2009*.

Indigenous population is repeated. The rate for community based corrections is compared with the rate of imprisonment in the chart below.

**Chart 15: Indigenous rates of community corrections versus imprisonment 07–08<sup>39</sup>**



1.58 The difference in the rate of Indigenous community corrections and imprisonment varies for each state. The rates are almost equal for Western Australia, indicating an Indigenous adult in that state is almost as likely to be imprisoned as put into community-based corrections. By contrast, the ACT and South Australia are more than twice as likely to place an offender in a community-based placement rather than a prison.

1.59 The difference between community correction rates and imprisonment rates can be expressed as a ratio that indicates the relative likelihood that a convicted offender will be sent to community corrections rather than prison. Nationally, an Indigenous person is 1.5 times more likely to be sent to community corrections instead of prison, while a non-Indigenous person is 2.2 times more likely to enter community corrections rather than prison.<sup>40</sup> This may be explained by the fact that Indigenous offenders are more likely to have a prior record than a non-Indigenous offender. This would tend to result in less favourable sentencing by a court.

## Re-offending and recidivism

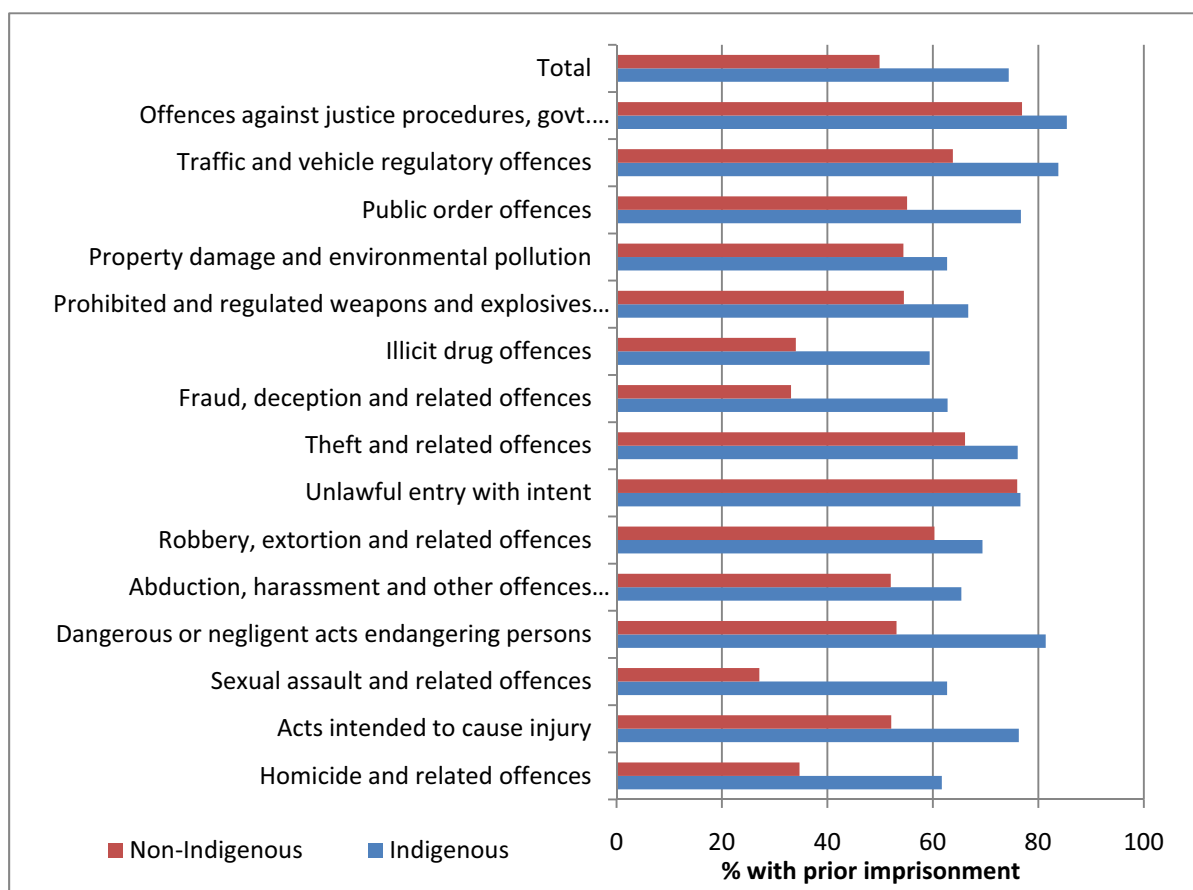
1.60 Rates of reimprisonment and recidivism are much higher for Indigenous offenders. Most Indigenous prisoners have previously been to jail. Approximately 75 per cent of Indigenous prisoners have previously served a prison sentence, compared

39 Productivity Commission, *Report on Government Services 2009*.

40 Secretariat calculations using data from Productivity Commission, *Report on Government Services 2009*.

to 50 per cent of non-Indigenous prisoners.<sup>41</sup> Chart 16 shows the share of prisoners who have served a prison term prior to their current term, by offence category. As can be seen, over 80 per cent of Indigenous prisoners sentenced for offences against justice procedures, traffic and vehicle regulatory offences and dangerous and negligent acts endangering persons had served a prior prison term.

**Chart 16: Prior imprisonment by offence (2009)**<sup>42</sup>



1.61 The Productivity Commission produce statistics on recidivism that measure the proportion of prisoners and offenders that return to the corrective service system within two years. The data does not include Indigenous status, but is quoted here as a general benchmark of recidivism in Australia.

1.62 For the cohort of prisoners who were released in 2005–06, 38 per cent returned to prison within two years, with a further six per cent placed in community corrections. For offenders discharged from community corrections, 18 per cent returned to community corrections and 10 per cent were sentenced to prison within two years.<sup>43</sup>

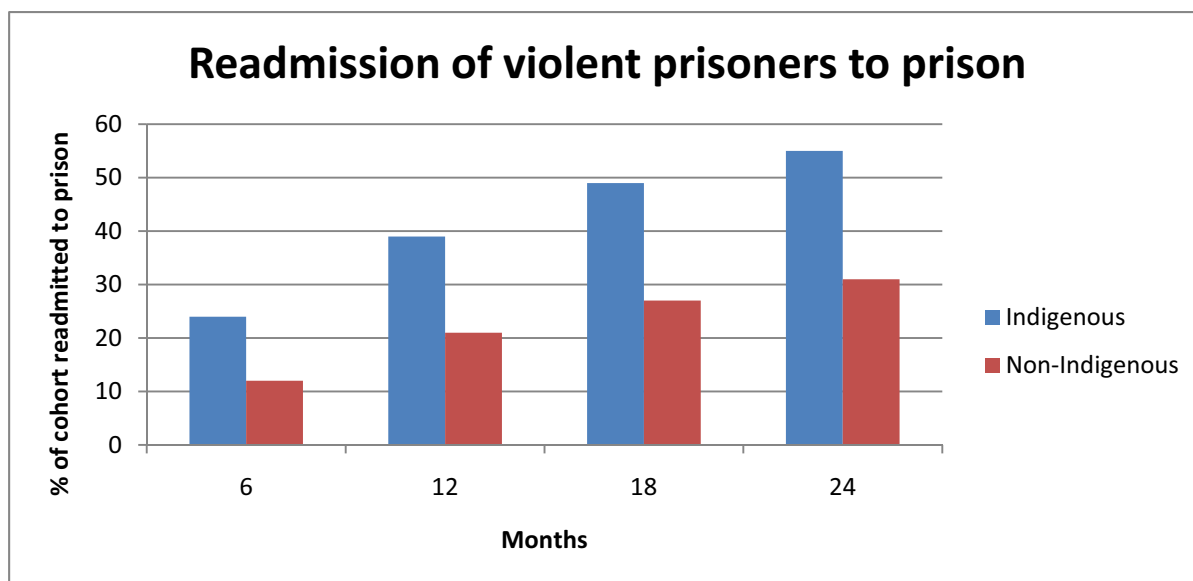
41 ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.

42 ABS, *Prisoners in Australia 2009*, Catalogue 4517.0, December 2009.

43 Productivity Commission, *Report on Government Services 2009*.

1.63 A study of Indigenous offenders by Willis and Moore offers some comparison to these figures. They analysed the re-offending pattern of a cohort of Indigenous men who had been imprisoned for violent offences and released in 2001 or 2002. As such, the cohort was comprised of the most common type of offender in the Indigenous prison population. The study found that Indigenous men were more likely to return to prison within two years (55 per cent of the cohort) compared to non-Indigenous men (31 per cent).

**Chart 17: Percentage of released violent prisoners readmitted to prison<sup>44</sup>**



1.64 Figures quoted by the Chief Justice of Western Australia indicate that in that state, 70 per cent of Indigenous male prisoners re-offended following release from prison, compared to approximately 40 per cent of non-Indigenous offenders. In the case of female prisoners, the rate of return to prison by Indigenous prisoners was 55 per cent, compared to 30 per cent of non-Indigenous prisoners.<sup>45</sup>

1.65 Recidivism statistics should be used with caution. As they are generally based on the number of released offenders returning to corrective services within a given time period, they may not capture offending that was not caught, offenders who were diverted from court by police discretion, offenders who were convicted but received other court outcomes and the level of seriousness of new offences. The time period is also often a cause for concern, as in the case of the Productivity Commission which uses the very short measurement period of two years. As a result, recidivism statistics

44 Willis and Moore, *Reintegration of Indigenous Prisoners*, AIC Research and Public Policy Series No. 90, 2008.

45 The Hon Wayne Martin, Chief Justice of Western Australia, *Corrective Services for Indigenous Offenders – Stopping the Revolving Door*, Presentation, 17 September 2009, Perth WA.

can be a blunt instrument for measuring the effectiveness of corrective service policies.<sup>46</sup>

## Juvenile detention

1.66 Rates of Indigenous juvenile detention are much higher than for the non-Indigenous Australian population. In 2007, Indigenous juveniles accounted for 59 per cent of the total detention population. This is an even greater overrepresentation than the 25 per cent share of adult prisoners.

1.67 From 1981 to 2007, the overall detention rate for all juveniles in Australia fell by approximately 50 per cent.<sup>47</sup> However, separate data for Indigenous juveniles was not collected until 1994. This data shows that the Indigenous detention rate has been dramatically higher than the non-Indigenous rate since the data collection began.

1.68 In 2007, the last year for which data is available, the detention rate of Indigenous juveniles was 397 per 100 000. This was 28 times higher than that of non-Indigenous juveniles (14 per 100 000).<sup>48</sup>

**Chart 18: Juvenile detention rate 1994–2007<sup>49</sup>**



46 Cuneen and Luke, *Recidivism and the Effectiveness of Criminal Justice Interventions*, Current Issues in Criminal Justice, Vol. 19, No. 2, November 2007.

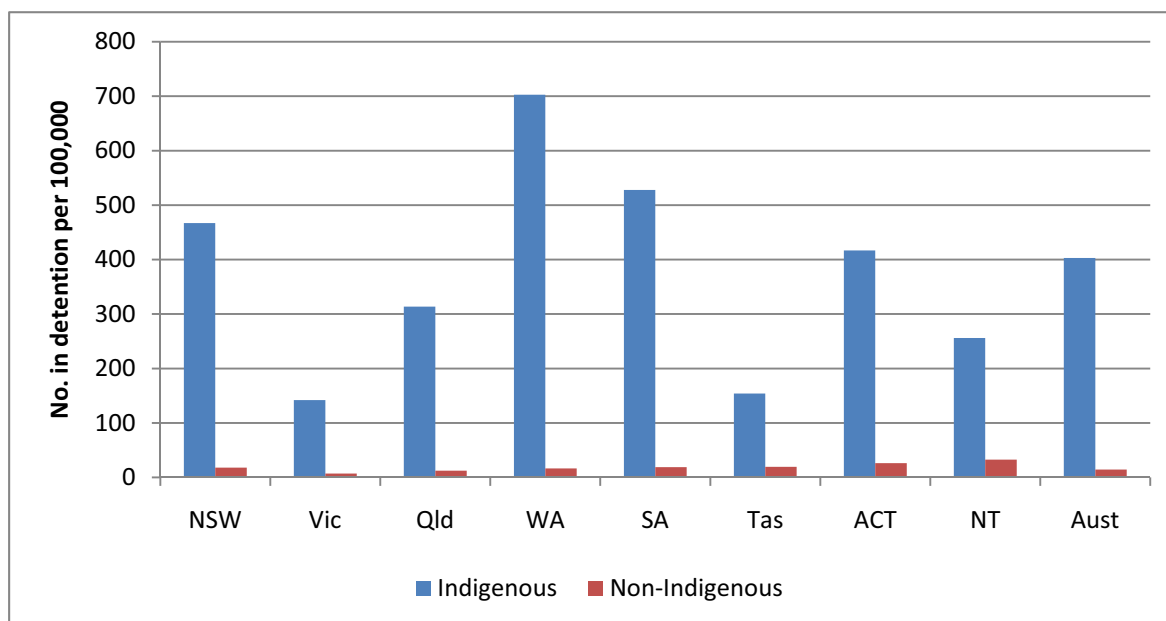
47 Juvenile Detention Statistics, AIC, [http://www.aic.gov.au/en/statistics/criminaljustice/juveniles\\_detention.aspx](http://www.aic.gov.au/en/statistics/criminaljustice/juveniles_detention.aspx) (accessed 18 December 2009).

48 Juvenile Detention Statistics, AIC, [http://www.aic.gov.au/en/statistics/criminaljustice/juveniles\\_detention.aspx](http://www.aic.gov.au/en/statistics/criminaljustice/juveniles_detention.aspx) (accessed 18 December 2009).

49 Chart reproduced from Juvenile Detention Statistics, AIC, [http://www.aic.gov.au/en/statistics/criminaljustice/juveniles\\_detention.aspx](http://www.aic.gov.au/en/statistics/criminaljustice/juveniles_detention.aspx) (accessed 18 December 2009).

1.69 The AIC data above indicates that the Indigenous juvenile detention rate fell significantly between 1998 and 2001, before gradually increasing until 2006 and increasing sharply in the last year for which data is available. The chart below breaks down the latest available detention data by state. The detention rates mimic the pattern observed with imprisonment rates, in that WA has the highest rate, followed by SA and NSW.

**Chart 19: Juvenile detention rate by state (2007)<sup>50</sup>**



1.70 The following section, which analyses the causes of Indigenous overrepresentation, includes the results of research suggesting a close link between juvenile and adult offending. This link can perhaps be observed in the similarities between high imprisonment rates and high detention rates by state and territory.

50 Productivity Commission, *Overcoming Indigenous Disadvantage 2009*.

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## Why is the Indigenous population overrepresented in the criminal justice system?

1.71 This question can be approached from two angles. On one side of the equation is the level and nature of Indigenous offending itself. On the other side of the equation is how the criminal justice system responds to the offending. An analysis of the question needs to examine both elements.

1.72 This section is thus divided into two parts. The first part examines Indigenous offending itself. It identifies common features of Indigenous offending, such as the prevalence of violence and the strong connection to alcohol abuse. These features can be seen as causes of the offending, but they also have underlying causes themselves such as poverty and social exclusion. The second part examines the interaction of Indigenous people with the criminal justice system.

1.73 There is much debate over the cause of Indigenous overrepresentation. It is a complex issue and as such, while the following section offers some analysis, it should not be considered comprehensive.

### Features of Indigenous offending

1.74 Various studies indicate that the prevalence of violence, excessive use of alcohol and underlying mental health issues play a major role in the over-representation of Indigenous people in Australia's prisons. These factors are interrelated. In addition, Indigenous offenders are less-educated, more likely to be unemployed and have trouble with accommodation and income. All these factors have been shown to increase the likelihood of offending and thus contribute to the high rate of imprisonment of Indigenous people.

#### Violence

1.75 Violence is a major feature of Indigenous offending, as the high share of prisoners jailed for assault shows. The burden of this violence also falls on the Indigenous population. Indigenous people were hospitalised as a result of spouse or partner violence at 34 times the rate of non-Indigenous people on an age-standardised basis in 2006–07. Indigenous people were 12.5 times more likely to be hospitalised for assault in general.<sup>51</sup> This data is presented in Table 4 below. Almost a quarter of Indigenous people surveyed in 2002 and aged 15 years or over had been a victim of physical or threatened violence in the past 12 months.<sup>52</sup>

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51 Productivity Commission, *Overcoming Indigenous Disadvantage, 2009*, p. 4.127.

52 ABS, *National Aboriginal and Torres Strait Islander Social Survey 2002*, Catalogue 4714.0, 2004.

**Table 5: Non-fatal hospitalisations for assault, rate per 1000 people (2006–07)<sup>53</sup>**

|                                 | Indigenous  | Non-Indigenous | Ratio       |
|---------------------------------|-------------|----------------|-------------|
| <b>Family violence assaults</b> | <b>4.8</b>  | <b>0.2</b>     | <b>30.3</b> |
| <i>Spouse/domestic partner</i>  | 3.3         | 0.1            | 33.9        |
| <i>Parent</i>                   | 0.3         | –              | 12.0        |
| <i>Other family member</i>      | 1.3         | –              | 31.8        |
| <b>Other assaults</b>           | <b>8.3</b>  | <b>0.9</b>     | <b>9.4</b>  |
| <b>Total assaults</b>           | <b>13.1</b> | <b>1.0</b>     | <b>12.5</b> |

1.76 The high rate of assault in the Indigenous population leads to high levels of incarceration for that crime. As noted above, 32 per cent of the Indigenous prison population is serving time for assault and related offences. More than half of Indigenous prisoners committed a crime that involved violence. The offending rate for acts intended to cause injury is 3180 per 100 000.<sup>54</sup>

1.77 In interviews conducted by Mals, Howells, Day and Hall (2008), human services workers involved in rehabilitation of violent offenders suggested that Indigenous, violent, male offenders often suffered from low self-esteem and a pervasive sense of frustration, anger and powerlessness. The interviewees also mentioned inter-family feuds, jealousy within intimate relationships and alcohol intoxication as triggering factors for violence.<sup>55</sup>

1.78 There is a strong connection between alcohol abuse and violent offending by Indigenous Australians that is explored further in the next section.

1.79 Willis and Moore (2008) interviewed violent Indigenous male offenders as part of their study into reintegration. They note that violent offenders themselves refer to the impact of violence in their childhoods, particularly within the family, as a significant factor in their own violent offending. Most indicated that they regarded the abuse and violence around them in childhood as normal. In normalising the abuse, many reported that they became violent as children and subsequently as adults. The following excerpt from Willis and Moore's report indicates the importance of socialisation as a child:

Particular attention was given to the role of violence in their relationships with women. It was noted in several interviews that, after growing up in an abusive environment in which a female caregiver was the target of violence, some offenders felt it was acceptable to control and perpetrate violence against women. When discussing the impact of violence on his life, one prisoner from Queensland said:

53 Reproduced from Productivity Commission, *Overcoming Indigenous Disadvantage, 2009*, p. 4.131.

54 Secretariat calculation using ABS, *Recorded Crime – Offenders, 2008–09*, Catalogue 4519.0, 2010.

55 Mals, Howells, Day and Hall, *Indigenous Service providers' perspectives on anger programs*, in *Anger and Indigenous Men*, Day, Nakata & Howells, Federation Press, 2008



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*It made me violent in my relationship. I watched my uncles control my aunties, so I wanted to do that too. I wanted to control. It makes me really remember the violence growing up when I get with a woman.*

Another prisoner from Western Australia said:

*My uncles were hitting my aunties and I thought that women should be beaten up for nothing. Women were supposed to do what you wanted them to do.<sup>56</sup>*

1.80 Research in other countries, including the US and UK has found a strong association between violence and low social status, with the most pronounced violence occurring in societies with higher inequality.<sup>57</sup> James Gilligan, a psychiatrist who now heads the Center for the Study of Violence at the Harvard Medical School, was in charge of mental health services in the Massachusetts prison system for 30 years. He argues that acts of violence are 'attempts to ward off or eliminate the feeling of shame and humiliation – a feeling that is painful, and can even be intolerable and overwhelming – and replace it with its opposite, the feeling of pride.'<sup>58</sup>

1.81 Gilligan found in interviews with violent offenders that the triggers for violent acts had involved threats (or perceived threats) to pride; acts that instigated feelings of humiliation or shame. Wilkinson and Pickett (2009) hypothesise that when young men are denied access to a route to higher status in society, such as through education, employment and income, they turn to violence as a means of enforcing respect and protecting pride.<sup>59</sup>

1.82 This argument may or may not have validity in the context of Indigenous Australia. The same research has not been conducted here, so this hypothesis remains untested. The studies above highlight that the violent offenders in question are overwhelmingly young males from low status backgrounds, which accords with the profile of Indigenous prisoners in the first section of this paper.

1.83 A different analysis of Indigenous violence has been proposed by the anthropologist Peter Sutton. He cites studies of skeletal remains of Aboriginal people as evidence of high levels of injury resulting from violence in traditional Aboriginal society.<sup>60</sup> He hypothesizes that this historical violence has relevance in describing modern violence in Indigenous communities.

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56 Willis and Moore, *Reintegration of Indigenous Prisoners*, AIC Research and Public Policy Series No. 90, 2008, p. 40.

57 Richard Wilkinson and Kate Pickett, *Violence: Gaining Respect*, in *The Spirit Level: Why More Equal Societies Almost Always Do Better*, Allen Lane, 2009.

58 James Gilligan, *Preventing Violence*, New York, Thames & Hudson, 2001.

59 Richard Wilkinson and Kate Pickett, *Violence: Gaining Respect*, in *The Spirit Level: Why More Equal Societies Almost Always Do Better*, Allen Lane, 2009.

60 Peter Sutton, *Violence, Ancient and Modern* in *The Politics of Suffering*, Melbourne University Press, 2009.

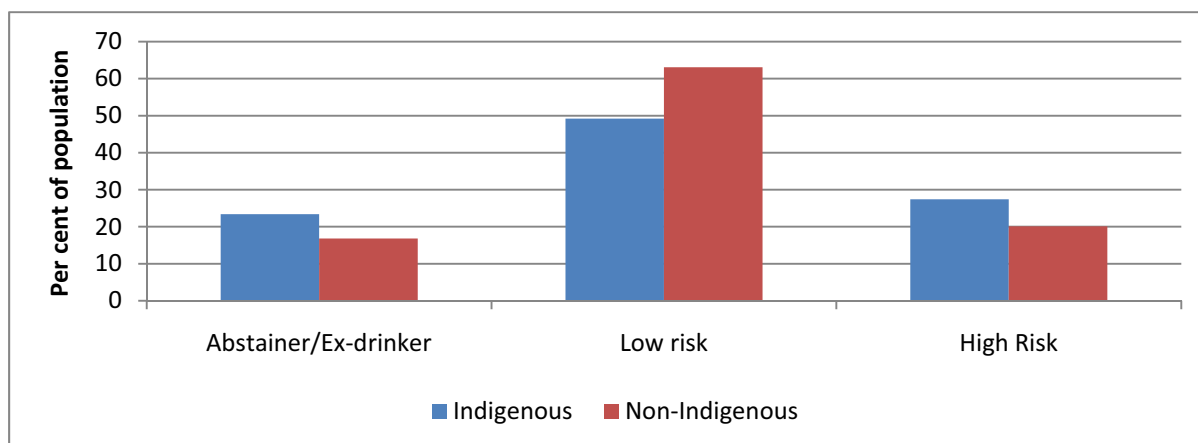
## Alcohol, substance abuse and offending

1.84 There is a particularly strong connection between alcohol use and Indigenous offending. This section presents data on alcohol use in Indigenous communities followed by evidence of the link between consumption and offending. Drug use and substance abuse also plays a role, but not to the same degree as alcohol. Various statistics suggest that around two thirds of violent Indigenous offending involves alcohol.

1.85 The ABS National Health Survey found that overall, Indigenous adults were less likely to have consumed alcohol in the week previous to the survey (53.4 per cent of Indigenous people abstained compared to 36.1 per cent of non-Indigenous). Amongst those adults that did drink however, rates of risky drinking were similar for both Indigenous and non-Indigenous people.

1.86 The National Drug Strategy Household Survey, conducted by the AIHW, found that a greater proportion of Indigenous people abstained from alcohol than non-Indigenous, but that a greater proportion was in the high short-term risk category.

**Chart 20: Alcohol risk (binge drinking, per cent of population) 2007<sup>61</sup>**



1.87 Snowball and Weatherburn (2008) found that high risk alcohol consumption was the single largest determinant of violent victimisation in Indigenous communities. Their research suggests that rather than alcohol abuse being merely a symptom of social disadvantage, alcohol abuse was in fact a major determinant of violence even when social disadvantage was controlled for in the study.<sup>62</sup> Despite this finding, there is ongoing debate about whether alcohol is a primary cause of offending in and of itself, or a secondary cause associated with greater problems such as poverty, social exclusion, unemployment and lack of education. It is likely to be both.

61 Productivity Commission, *Overcoming Indigenous Disadvantage*, 2009.

62 Snowball and Weatherburn, *Theories of Indigenous Violence: A preliminary empirical assessment*, Australian and New Zealand Journal of Criminology, Vol. 41, No. 2, 2008.

1.88 Intoxication is a common feature of Indigenous offending, and to a much greater degree than in the non-Indigenous population. Willis and Moore (2008) found that amongst the cohort of Indigenous male violent offenders they interviewed most had been under the influence of alcohol, drugs or petrol at the time of their offence. Most admitted to having a problem with alcohol, drugs or both with some indicating that their habits had formed as a coping response in childhood.<sup>63</sup>

1.89 A study by Putt, Payne and Milner (2005) found that 69 per cent of Indigenous male prisoners and 43 per cent of Indigenous male police detainees were under the influence of alcohol at the time of offending, compared to 27 per cent of non-Indigenous prisoners and 28 per cent of non-Indigenous police detainees. The same study found that for Indigenous prisoners, the most common dependency was alcohol, followed by cannabis, amphetamines and heroin. Police detainee data suggested that 70 per cent of Indigenous males arrested had used cannabis in the past 30 days.

1.90 Johnson (2004) conducting a similar study on female prisoners found that 60 per cent of Indigenous female prisoners reported being under the influence of alcohol at the time of their offending, compared with 16 per cent of non-Indigenous women. As with the male offenders in the study by Putt, Payne and Milner (2005), Indigenous women had higher rates of dependency on alcohol and cannabis compared to their non-Indigenous counterparts.<sup>64</sup>

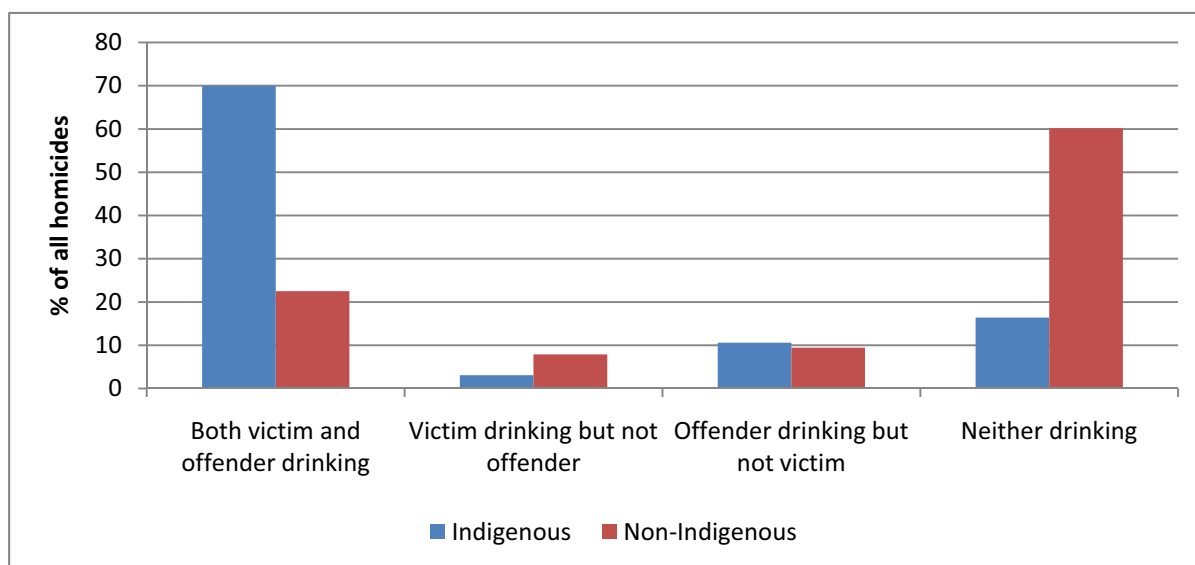
1.91 Data collected by the Australian Institute of Criminology indicates that in 70 per cent of homicide cases (murder and manslaughter) within the Indigenous community, both offender and victim were drinking alcohol. In the non-Indigenous population, 22.5 per cent of homicide cases involved both parties drinking.

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63 Willis and Moore, *Reintegration of Indigenous Prisoners*, AIC Research and Public Policy Series No. 90, 2008, p. 41.

64 Johnson, Holly, *Key Findings from the Drug Use Careers of Female Offenders Study*, AIC Trends and Issues in Crime and Criminal Justice No. 289, November 2004.

**Chart 21: Alcohol and homicide cases, 1999–00 to 2006–07<sup>65</sup>**



1.92 The *Little Children are Sacred* report, released in 2007, found a strong connection between alcohol abuse in regional and remote communities and sexual abuse of women and children. In the four years from 2001, an average of 65 per cent of the prison population was serving sentences for alcohol-related offences.<sup>66</sup>

1.93 Further evidence of the connection between alcohol and Indigenous offending can be found in the results of liquor restrictions in Halls Creek and Fitzroy Crossing. The committee heard from WA police that arrest rates had fallen 40 per cent and overall charges by 50 per cent in the 14 weeks following the alcohol restriction in Halls Creek.<sup>67</sup>

## Mental health

The ABS NATSIS Survey found that 26.6 per cent of Indigenous adults experienced high to very high levels of psychological distress, while in almost every age group, Indigenous people were approximately twice as likely to experience high to very high levels of distress.

1.94 The committee heard from an Aboriginal psychologist, Dr Darrell Henry at its hearing in Narrogin, Western Australia. Dr Henry, who practices in communities across WA, informed the committee that members of these communities commonly suffered from intergenerational trauma. Historical dispossession, racism and forcible removal from family combined with grief, early death of family members, and

65 Productivity Commission, *Overcoming Indigenous Disadvantage*, 2009.

66 *Little Children are Sacred*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 2007, p. 162.

67 Inspector Jim Cave, WA Police, *Committee Hansard*, 26 August 2009, p. 92.

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violence led to what Dr Henry described as a 'pool' of traumatised people in the community.<sup>68</sup>

1.95 Dr Henry's comments are reflected in the literature on Indigenous mental health. Mental health issues are linked to violent offending in particular, and more generally the violation of social norms. McCausland (2008) examined these issues and drew attention to the National Inquiry into the Human Rights of People with a Mental Illness, conducted in 1993 by the Human Rights and Equal Opportunity Commission. Testimony by witnesses suggested that many Indigenous people 'act out' their problems in anti-social and self-destructive behaviour. The report noted that rather than being identified as a mental health issue, this behaviour often led to contact with the criminal justice system. This was particularly so for young men, who as previously noted are the most imprisoned section of the Indigenous community by far.

1.96 The *Bringing Them Home* report made a similar finding, tracing the history of trauma associated with Indigenous children who were removed from their parents and a resulting ongoing cycle of damage. The ability of traumatised individuals to attain education, employment and income was reduced. The emotional distress arising from this situation led some individuals to perpetrate violence, self-harm, substance abuse or anti-social behaviour.<sup>69</sup>

### **Employment and education**

1.97 Employment has been shown to have a significant protective effect in reducing the likelihood of criminal behaviour. Unemployment is a strong determinant of both Indigenous and non-Indigenous offending. This is significant given the generally high levels of unemployment in remote Indigenous communities.

1.98 A prior term of imprisonment has a strong negative impact on employment prospects. This can result in a vicious cycle of unemployment and offending. Studies in Australia, the United Kingdom and the United States have indicated that prisoners have extra difficulty in finding employment following release, and that unemployed ex-prisoners are more likely to re-offend. ABS statistics show that Indigenous people who have been arrested in the past 5 years are more than twice as likely to be unemployed (29 per cent) than employed (11 per cent).<sup>70</sup>

1.99 The relationship between employment and criminal offending is complex. Walker and McDonald (1995) found that unemployment was a greater risk factor for offending than Indigenous status. According to figures from 1992, the imprisonment rate of Indigenous people who had been employed at the time of their offending was

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68 Dr Darryl Henry, *Committee Hansard*, 8 October 2009, p. 34.

69 McCausland, Ruth, *Indigenous Trauma, Grief and Loss*, in Anger and Indigenous Men, Day, Nakata & Howells, Federation Press, 2008.

70 ABS, *Crime and Justice 2005*, Catalogue No. 4102.0, 2005.

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332 per 100 000. The same rate for unemployed Indigenous people was 6495 per 100 000.<sup>71</sup>

1.100 The unemployment rate of Indigenous people in 2008 was 16.5 per cent, which was much higher than the non-Indigenous rate.<sup>72</sup> Note however, that while the unemployment rate for Indigenous people fell since 2002, imprisonment rates have continued to increase.

1.101 Walker and McDonald (1995) also noted the importance of educational attainment. The imprisonment rate of Indigenous people who had completed school was 164 per 100 000, while for those who had not, the rate was 2217 per 100 000. The rates for the non-Indigenous population were 17 and 176 per 100 000 respectively.

1.102 The importance of employment and education is illustrated in this excerpt from the ABS NATSISS survey conducted in 2002:

Indigenous people who had ever been charged by police (35%) were around twice as likely to be unemployed as the rest of the Indigenous population. In 2002, 21% of males and 19% of females who had ever been charged were unemployed compared with 12% of males and 9% of females in the remainder of the Indigenous population. Similarly, those ever charged were more likely to have ceased formal schooling before Year 10, although the difference primarily occurred among males. Of Indigenous males aged 15 years or over, 42% of those who had ever been charged had ceased formal schooling before Year 10 compared with 32% of other Indigenous males.<sup>73</sup>

1.103 Employment and education levels, while strong predictors of the likelihood of offending, do not necessarily account for the differences in imprisonment rates between Indigenous and non-Indigenous populations. For instance, employed Indigenous people were still 13 times more likely to be imprisoned than employed non-Indigenous people, and Indigenous people who had graduated from high school were still 10 times more likely to be imprisoned than non-Indigenous people who had graduated.<sup>74</sup> While part of the story, they are by no means the sole explanation.

## **Accommodation**

1.104 Research by Baldry et al. (2006) identified homelessness as a significant risk factor for re-offending. Participants in the study were almost twice as likely to return

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71 Walker and McDonald, *The Overrepresentation of Indigenous People in Custody in Australia*, AIC Trends and Issues in Crime and Criminal Justice, August 1995, p.5.

72 ABS, *National Aboriginal and Torres Strait Islander Social Survey 2008*, Catalogue No. 4714.0, October 2009.

73 ABS, *National Aboriginal and Torres Strait Islander Social Survey 2002*, Catalogue 4714.0, 2004.

74 Walker and McDonald, *The Overrepresentation of Indigenous People in Custody in Australia*, AIC Trends and Issues in Crime and Criminal Justice, August 1995, p.5.

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to prison within nine months if they were homeless. Of the Indigenous participants in the study, around half were homeless nine months after their release from prison.

1.105 Accommodation is a consistent issue in regional and remote Indigenous communities. Given the findings of the above study, problems associated with accommodation are likely to make reintegration for Indigenous prisoners difficult.

### **Cyclical and repeat offending**

1.106 Some initial statistics on recidivism are presented in the first section of this paper. They indicate that Indigenous prisoners are more likely to have served a prior prison sentence, and more likely to return to prison faster following release. It would appear that this pattern of re-offending starts early.

1.107 A study by Chen et al. (2005) into the likelihood of juvenile offenders re-offending as either juveniles or as adults found that nine out of ten Indigenous youths who appeared in a children's court went on to appear in an adult court within eight years. Of these children, 36 per cent received a prison sentence later in life. Chen et al. note that an Indigenous male who appears even once in a children's court is almost certain to appear before an adult court within eight years.<sup>75</sup>

1.108 It is also true that the earlier in life an Indigenous youth appears before a children's court, the higher the risk is of an adult custodial sentence later in that person's life. Indigenous males appearing before a children's court between the age of 10 and 14 were predicted to have an approximate risk of an adult prison sentence of 45 per cent.<sup>76</sup> Similarly, each reappearance in a children's court by an Indigenous youth significantly increases the risk of an adult prison sentence. With two or more appearances, the risk of an Indigenous male receiving a prison sentence was predicted to be slightly more than 55 per cent.<sup>77</sup> The strong link between juvenile and adult offending, particularly for Indigenous people, suggests that interventions targeted at youth may be particularly effective.

1.109 Chen et. al.'s study also found that Indigenous offenders are likely to reappear in court much sooner than non-Indigenous offenders. The results of the study are reproduced in the chart below, and indicate that Indigenous juveniles are more likely to reappear in court following a first appearance than their non-Indigenous counterparts.

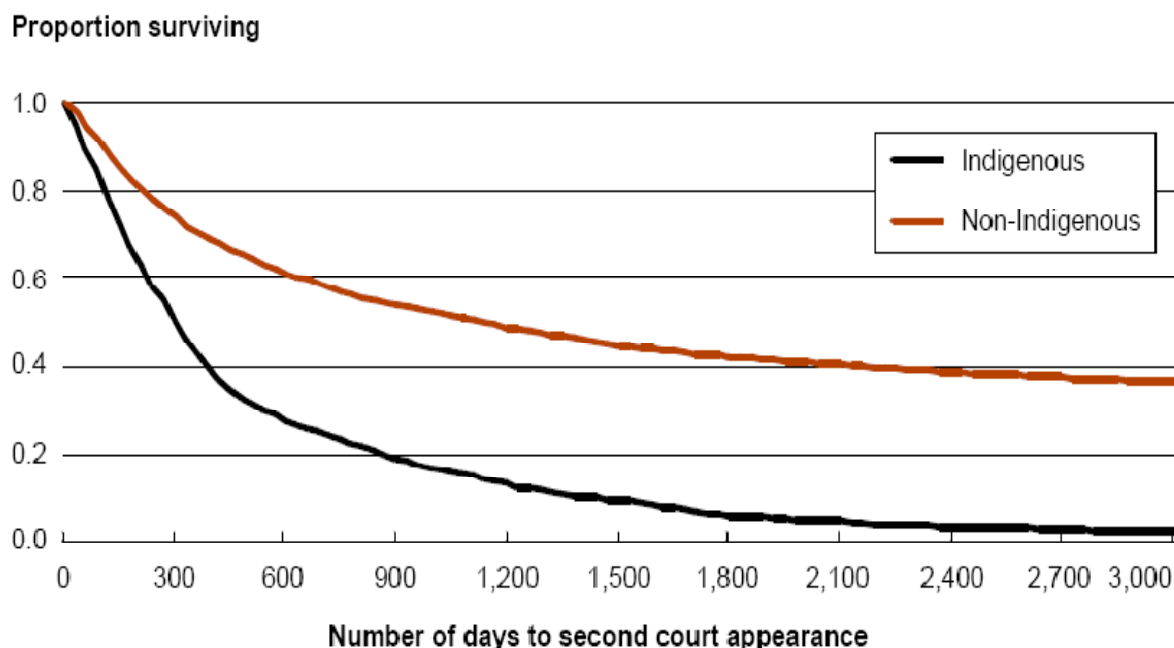
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75 Chen, Matruggio, Weatherburn and Hua, BOSCAR Crime and Justice Bulletin, No. 86, May 2005, p. 4.

76 Chen, Matruggio, Weatherburn and Hua, BOSCAR Crime and Justice Bulletin, No. 86, May 2005, p. 5.

77 Chen, Matruggio, Weatherburn and Hua, BOSCAR Crime and Justice Bulletin, No. 86, May 2005, p. 7.

**Chart 22: Survival function based on time to second court appearance for juveniles who first appeared in the Children's Court in 1995<sup>78</sup>**



1.110 Chen et al found that the average period of time between first and second court appearance for Indigenous juvenile offenders was 1.5 years, compared to 4.4 years for the non-Indigenous group.

1.111 These findings accord with data from the ABS 2002 NATSIS Survey. The survey data was used to compare two cohorts of Indigenous adults. The first cohort had first been charged by police before the age of 17, while the second cohort had been charged for the first time aged 25 or older. The survey found that 54 per cent of the first cohort had been arrested in the last 5 years, and 29 per cent had been imprisoned in that time. Of the second cohort however, only 31 per cent had been arrested by police and 14 per cent had been imprisoned.<sup>79</sup> This suggests that early offending is linked to higher levels of offending later on.

1.112 How much of deterrence is imprisonment? Cunneen (2008), in interviews with victims of domestic violence, police, magistrates and service providers, found a general consensus that prison sentences had little deterrent value for many Indigenous offenders.<sup>80</sup> This was reflected in comments about poverty by the Department of Corrective Services in Western Australia, who stated:

78 Chen, Matruggio, Weatherburn and Hua, BOSCAR Crime and Justice Bulletin, No. 86, May 2005.

79 ABS, *National Aboriginal and Torres Strait Islander Social Survey 2002*, Catalogue 4714.0, 2004.

80 Cunneen, Chris, *Criminology, Criminal Justice and Indigenous People: A Dysfunctional Relationship?* John Barry Memorial Lecture, University of Melbourne, 25 November 2008.



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Whether you are Aboriginal or non-Aboriginal and your circumstances are so poor or you are living in such poverty, imprisonment clearly cannot be a deterrent.<sup>81</sup>

1.113 Ogilvie and Van Zyl (2001) studied Indigenous juvenile offenders from regional and remote communities in the Northern Territory to determine how strong a deterrent the threat of detention was for them. They found that imprisonment and detention was in fact a rite of passage for many of the young offenders. They also found that detention was, for some, a means to construct an identity.<sup>82</sup> Young offenders may refer to jail as their second home, with the offer of a more stable life than their own communities.<sup>83</sup> Ogilvie and Van Zyl noted that young people living in communities with few opportunities for employment or other meaningful social engagement were less likely to experience negative consequences as a result of imprisonment such as shame, peer rejection or reduced employment prospects (which were negligible to begin with). Some saw detention as a chance for new experiences such as a plane ride, more interesting activities and the opportunity to spend time with friends who preceded them.<sup>84</sup>

### **Alienation from the criminal justice system**

1.114 Blagg (2008), emphasises that an understanding of Indigenous overrepresentation in the criminal justice system requires analysis that falls outside of the traditional focus of criminology. He cautions that a narrow, traditional criminological focus on determinants of offending is not sufficient. He suggests that any analysis needs to be mindful of the history of colonisation, and the historical role of the criminal justice system as being the enforcement arm of colonial authority. This history, in Blagg's opinion, has led Indigenous people to be distrustful of and disconnected from the criminal justice system:

Unless we make sense of [the effect of colonialism] we cannot understand the depths of Aboriginal people's sense of alienation from, and frustration with, existing systems of justice.<sup>85</sup>

1.115 The alienation from the criminal justice system to which Blagg refers could mean that the controlling effect of social norms such as respect for government

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81 Ms Jacqueline Tang, Department of Corrective Services, *Committee Hansard*, 9 October 2009, p. 83.

82 Ogilvie and Van Zyl, *Young Indigenous Males, Custody and the Rites of Passage*, Trends and Issues in Crime and Criminal Justice No. 204, April 2001.

83 Chantrill, Paul, *The Kowanyama Justice Group: a study of the achievements and constraints on local justice administration in a remote Aboriginal community*, Occasional seminar, AIC, Canberra, 11 September 1997.

84 Ogilvie and Van Zyl, *Young Indigenous Males, Custody and the Rites of Passage*, Trends and Issues in Crime and Criminal Justice No. 204, April 2001.

85 Blagg, Harry, *Crime, Aboriginality and the Decolonisation of Justice*, Hawkins Press, 2008, p. 11.

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authority is much weakened for Indigenous people. There is some evidence, for example, that the shame of going to prison is less in Indigenous communities.<sup>86</sup> In fact, imprisonment may have become a rite of passage in some communities, as suggested by the Assistant Commissioner of Aboriginal Justice at the committee's Perth hearing and the evidence above.<sup>87</sup>

1.116 The effectiveness of the criminal justice system may be undermined as a result of the disconnection between it and social norms in Indigenous communities. Strategies that create a sense of ownership of and connection to criminal justice in a community may strengthen the effectiveness of the criminal justice system.

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86 Cunneen, Chris, *Criminology, Criminal Justice and Indigenous People: A Dysfunctional Relationship?* John Barry Memorial Lecture, University of Melbourne, 25 November 2008, p. 5.

87 Mr Neil Fong, Department of Corrective Services, *Committee Hansard*, 9 October 2009, p. 76.

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## The criminal justice response to Indigenous offending

1.117 The previous section outlines various risk factors that are likely to contribute to increased Indigenous offending. This section deals with how the criminal justice system responds to that offending. There is some evidence to suggest that the increase in the imprisonment rate of Indigenous people in the last decade is due to a toughening of the criminal justice system rather than an increase in actual offending.

### Policing

1.118 Data collected by state jurisdictions indicate that a smaller proportion of Indigenous than non-Indigenous juvenile offenders were diverted from court by formal cautioning or referrals in each State and Territory for which data was available.<sup>88</sup> There are legitimate reasons why this may be the case. For instance, Indigenous juvenile offenders are more likely to have a prior record, which may count against them being diverted from court.

1.119 In some states, the decision to divert an alleged offender is at the discretion of individual police officers. In NSW, an Act of Parliament governs the process which must be followed.<sup>89</sup>

1.120 Statistics collected by the ABS NATSISS survey suggest much higher rates of contact between police and Indigenous people, particularly young Indigenous people, a fact corroborated by police proceedings data. Cunneen (2008) suggests that the impact of zero-tolerance policing or initiatives such as 'move-on' powers in New South Wales is to compound Indigenous anger and mistrust of the criminal justice system. A study of police search powers in NSW found that in Bourke and Brewarrina, both towns with large Aboriginal populations, between 90 to 95 per cent of searches were unsuccessful. Cunneen believes that the unnecessary anger and mistrust of police arising from what is perceived as harassment has a criminogenic effect (by reducing the influence of social norms such as respect for authority and the justice system).<sup>90</sup>

### Bail

1.121 Some research suggests that the increase in Indigenous imprisonment rates is not due to an increase in offending, but rather increasing severity in bail decisions and sentencing outcomes.

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88 Productivity Commission, *Overcoming Indigenous Disadvantage*, 2009, p. 10.33.

89 Productivity Commission, *Overcoming Indigenous Disadvantage*, 2009, p. 10.34.

90 Cunneen, Chris, *Indigenous Anger and the Criminogenic Effects of the Criminal Justice System*, in *Anger and Indigenous Men* 2008

1.122 Fitzgerald (2009) found that one quarter of the increase in the NSW Indigenous imprisonment rate over the last eight years was the result of a greater proportion of Indigenous offenders being refused bail (12.3 per cent in 2001 compared to 15.4 per cent in 2008) and the average amount of time spent on remand (3.3 months in 2001 compared to 4.2 months in 2008).<sup>91</sup>

1.123 Denning-Cotter (2008) notes that as 22 per cent of the Australian prison population is on remand, there should be an increased focus on bail support programs. These programs would assist alleged offenders to comply with bail conditions, reducing the risk of breaching bail. A reduced risk of breaching bail would in turn increase the propensity of a magistrate to grant bail. These programs would also aim to reduce re-offending while on bail, increase court appearance rates and provide magistrates and police with a viable alternative to remand or incarceration.<sup>92</sup>

### **The sentencing decision and sentence length**

1.124 The same study by Fitzgerald (2009) referenced above found that three quarters of the increase in the Indigenous imprisonment rate in NSW over the last eight years could be explained by an increase in both the proportion of Indigenous offenders given a prison sentence and the length of prison sentences. This was despite the rate of offending remaining more or less the same, with the exception of offences against justice procedures.<sup>93</sup>

1.125 Fitzgerald notes that as Indigenous offenders are more likely to have a prior criminal record, commit a violent offence or breach a previous court order, they are more likely to be on the cusp of a prison sentence than the average non-Indigenous offender. As a result, any lowering of the threshold for a prison sentence (or longer prison sentence) will have a greater impact on Indigenous rather than non-Indigenous offenders.<sup>94</sup>

### **Law and order auctions**

1.126 As noted above by Fitzgerald, tougher crime policies tend to impact most severely on Indigenous offenders. Some state and territory elections have a focus on strong law and order campaigns. During election periods this can result in stricter law and order policies.

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91 Fitzgerald, J, *Why are Indigenous imprisonment rates rising?* Issue Paper no. 41, BOCSAR, August 2009

92 Denning-Cotter, Gabrielle, *Bail Support in Australia*, Indigenous Justice Clearinghouse Brief 2, April 2008.

93 Fitzgerald, Jacqueline, *Why are Indigenous Imprisonment Rates Rising?* BOSCAR Crime and Justice Statistics, Issue paper No. 41, August 2009.

94 Fitzgerald, Jacqueline, *Why are Indigenous Imprisonment Rates Rising?* BOSCAR Crime and Justice Statistics, Issue paper No. 41, August 2009.

1.127 At the committee's hearing in Sydney in October 2009, Dr Don Weatherburn noted that it is far easier for governments to promote increased punishment and longer sentences for criminals. It is much harder for government to sell to the public an overhaul of the criminal justice system that would see a greater use of therapeutic programs and a rehabilitative approach, despite evidence that this may reduce re-offending, increase community safety and cost less for the taxpayer in the long run. Dr Weatherburn noted that community ignorance about what actually represented best practice in criminal justice meant that politicians who were 'tough on crime' tended to gather more votes.<sup>95</sup>

1.128 Dr Weatherburn also noted that governments are required to show leadership in order to counteract this tendency to bid for harsher penalties:

I think governments need to take a far more considered view of what the public really thinks and there are many circumstances in which people who are initially opposed to an idea can be brought around to an idea if they have a persuasive politician or minister providing the arguments. There was a time, for example, when I was younger that people thought that we ought to have tariffs everywhere, people thought we should never have an immigration program whenever the unemployment rose. Everybody was hotly opposed to it. We wanted walls around Australia and we did not want migrants coming in but over time, as a result of leadership shown by both sides of politics, people came to see the advantages for Australia of immigration programs, of reducing tariffs and so on. I think the same story can be said of law and order.<sup>96</sup>

1.129 Blagg (2008) notes the existence of a self-defeating loop in justice strategies; 'where good initiatives are constantly disabled by punitive populist laws, policies and strategies targeted at the Aboriginal problem.'<sup>97</sup> Given the comments by Dr Weatherburn above, it could be argued that this is also true of justice policies in general.

1.130 Increasing incarceration rates appear to be a feature of other similar countries such as the US and the UK. Blumstein and Beck (1999) found that only 12 per cent of the increase in the US imprisonment rate between 1980 and 1996 could be explained by increased offending. The other 88 per cent was due to an increased tendency to send convicted offenders to prison and to impose longer sentences.<sup>98</sup> In the UK, prison populations have also grown because of longer prison sentences and the increased use of custodial sentences for crimes that previously would not have attracted one. In the UK, crime rates have in fact fallen at the same time as

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95 Dr Don Weatherburn, BOSCAR, *Committee Hansard*, 15 October 2009, p. 31.

96 Dr Don Weatherburn, BOSCAR, *Committee Hansard*, 15 October 2009, p. 31.

97 Blagg, Harry, *Crime, Aboriginality and the Decolonisation of Justice*, Hawkins Press, 2008, p. 19.

98 Blumstein and Beck, *Population Growth in US Prisons, 1980–1996*, in Tonry and Petersilia (Eds.), *Prisons*, Chicago: University of Chicago Press, 1999.

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imprisonment rates have increased.<sup>99</sup> However, the UK experience could also be interpreted as successful deterrence of crime by harsher penalties. Aos, Miller and Drake (2006) estimated that in Washington State, USA, a 10 per cent increase in the incarceration rate leads to a 3.3 per cent decrease in crime rates, subject to diminishing returns.<sup>100</sup> This finding is a significant consideration but may not be applicable to Australia or particularly to regional and remote Indigenous communities.

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99 Hough, Jacobson and Millie, *The Decision to Imprison: Sentencing and the Prison Population*. Rethinking crime and punishment, London: Prison Reform Trust, 2003.

100 Aos, Miller and Drake, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs and Crime Rates*, Olympia: Washington State Institute for Public Policy, 2006.

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## **The potential for innovations in the criminal justice system**

1.131 The causes of Indigenous offending and the nature of the interaction of offenders with the criminal justice system is complex. This section of the paper is restricted to opportunities for innovation within the criminal justice system. Improvements to the livelihoods of Indigenous people would undoubtedly reduce high rates of criminal offending and result in less entering the criminal justice system. It is possible that the greatest improvements, even in terms of reduced offending or incarceration rates, may come from investments in other areas such as education, health, economic development, community governance or any number of fields outside of the justice system.

1.132 The most successful programs listed below adopt a therapeutic approach to offender rehabilitation. Given the importance of factors such as violence and anger, alcohol abuse and mental health problems outlined in previous sections, therapeutic programs aimed at these problems could result in real reductions in offending rates.

1.133 Even small reductions in recidivism rates as a result of innovations in the criminal justice system can be beneficial. Depending on the cost of programs, they often end up in reducing over all corrective service costs. This idea is explored further in the section titled 'the economics of corrective services'.

1.134 Though this section outlines various programs or improvements that could be made to justice and correction procedures, it is important not to become too focused on that area alone, given the complexity of the problem.

1.135 Most of the programs described below have not been developed specifically for Indigenous people and in some instances they may not be suitable for, or may need to be adapted for, Indigenous offenders. Much of the research into offender rehabilitation is conducted in the USA or UK and as such has been developed for offenders who have grown up in a Western cultural environment. Certain treatments may not be culturally appropriate to Indigenous populations in Australia.

### **Cautioning and diversion**

1.136 Diversion seeks to prevent first time offenders from entering the formal justice system by 'diverting' them from a court appearance and into alternative sanctions. Diversion of offenders can include the use of cautions and warnings by police, conferencing with victims, police and community, and diversion to other services and programs.

1.137 An example is the juvenile pre-court diversion scheme in place in the Northern Territory since 2000. Under this scheme, police are able to use their discretion to divert offenders with either a verbal or written warning, or require that they attend a family or victim-offender conference. Cunningham (2007) found that

youth who were diverted were less likely to reoffend, but noted that this may be due to the selection of a particular type of offender for diversion by police.<sup>101</sup>

### **Adolescent diversion program**

1.138 This type of program 'stems from research experiments conducted in the 1970s and 1980s where youth were diverted from the juvenile court to prevent labelling as "delinquent." ADP "change agents" (usually college students) work with youth in their environment to provide community resources and initiate behavioural change. Change agents are trained in a behavioural model (contracting, with rewards written into actual contracts between youth and other significant persons in the youth's environment) and to become advocates for community resources. Youth and change agents are matched, whenever possible, on race and gender.<sup>102</sup>

### **Diversion with services (vs regular juvenile court processing)**

1.139 This category is broad, but includes juvenile court diversion programs where providing services to the youth are an important element. These programs are usually designed for low risk, first time juvenile offenders who would otherwise have their cases handled formally in the juvenile court. This is a diverse set of programs that include citizen accountability boards and counselling services provided by other social service agencies.<sup>103</sup>

## **Community-based and custodial rehabilitation programs**

1.140 Rehabilitation programs target causes of offending to reduce the likelihood of re-offending. These programs can be administered in custody or in the community and vary widely in the approach they take to rehabilitation. A discussion of useful concepts and principles of effective rehabilitation appears in the next section.

1.141 The following descriptions of juvenile and adult programs are taken from a comparison of corrective programs undertaken by Aos, Phipps, Barnoski and Lieb of the Washington State Institute for Public Policies (hereafter referred to as the Washington State Review).<sup>104</sup> The descriptions of programs are reproduced with some abridging below. The report analysed hundreds of program evaluations and aggregated the results in order to predict the effectiveness of particular types of programs. The results were updated in 2006 at the direction of the Washington State

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101 Cunningham, Teresa, *Pre-court diversion in the Northern Territory: impact on juvenile re-offending*, AIC Trends and Issues No. 339, 2007.

102 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 19.

103 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p.20.

104 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001.



Congress with a view to informing the state legislature on criminal justice policy<sup>105</sup> and again in 2009.<sup>106</sup> The most recent results are reproduced at the end of this section. As a result, the programs described below, taken from the 2001 report, may differ from the programs listed in the table of results (Table 6 below).

## Juvenile programs

### *Multi-systemic therapy*

1.142 One of the most promising programs, currently on trial in Australia, is multi-systemic therapy (MST). As described in the Washington State Review, MST is 'an intensive home-based intervention for chronic, violent, or substance abusing juvenile offenders, ages 12 to 17. Trained therapists work with the youth and his or her family. The MST intervention is based on several factors, including an emphasis on addressing the causes of delinquency. The treatment services are delivered in the youth's home, school, and community settings, with a strong focus on treatment adherence and program fidelity. Service duration averages 60 hours of contact over four months. Each MST therapist works in a team of four therapists and carries a caseload of four to six families.'<sup>107</sup>

1.143 MST was the program recommended by Dr Don Weatherburn at the committee's Sydney hearing. It is currently being trialled in Western Australia, including in Geraldton and Kalgoorlie and in Sydney, New South Wales. Both jurisdictions refer to their MST programs as Intensive Supervision Programs, which differs from the categorisation used in the Washington State Review. The 2001 Washington State Review found that MST reduced re-offending by an average of approximately 30 per cent, resulted in significant net savings to taxpayers and society and received the highest positive evaluation of all programs.<sup>108</sup> This result was moderated to 7.7 per cent in the 2009 paper.<sup>109</sup>

### *Functional family therapy*

1.144 The Washington State Review describes Functional Family Therapy (FFT) as a program that 'targets youth, aged 11 to 18, with problems of delinquency, violence,

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105 Aos, Miller and Drake, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs and Crime Rates*, Olympia: Washington State Institute for Public Policy, 2006.

106 Drake, Aos and Miller, *Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State*, Victims and Offenders, 4:170–196, 2009.

107 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 17.

108 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 8.

109 Drake, Aos and Miller, *Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State*, Victims and Offenders, 4:170–196, 2009.

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and substance use. FFT focuses on altering interactions among family members and seeks to improve the functioning of the family unit. FFT is provided by individual therapists, typically in the home setting, and focuses on increasing family problem solving skills, enhancing emotional connection, and strengthening the parental ability to provide appropriate structure, guidance, and limits to their children. FFT generally requires 8 to 12 hours of direct service to youth and their families, and generally no more than 26 hours for the most severe problem situations.<sup>110</sup>

### ***Aggression replacement training***

1.145 As described in the Washington State Review, 'this program is a cognitive-behavioural intervention that attempts to reduce the anti-social behaviour, and increase the pro-social behaviour, of juvenile offenders. ART has three components. In the 'anger control' component, participants learn what triggers their anger and how to control their reactions. The 'skill-streaming' behavioural component teaches a series of pro-social skills through modelling, role playing, and performance feedback. In the 'moral reasoning' component, participants work through cognitive conflict through 'dilemma' discussion groups. The program is run in groups of 8 to 10 juvenile offenders, which helps keep the per participant cost lower than individually-focused interventions.'<sup>111</sup>

### ***Multidimensional treatment foster care***

1.146 The Washington State Review describes Multidimensional treatment foster care (MTFC) as 'an alternative to group residential placement for high-risk and chronic juvenile offenders. Youth are placed with two trained and supervised foster parents for six to 12 months, and the youth's parents participate in family therapy. Near the end of the child's stay, the youth and his or her parents participate together in family therapy. The intervention is intensive, with at most two, and usually one, youth placed in the foster family. Families are recruited, trained, and closely supervised. MTFC-placed adolescents are given treatment and intensive supervision at home, in school, and in the community; clear and consistent limits with follow-through on consequences; positive reinforcement for appropriate behaviour; a relationship with a mentoring adult; and separation from delinquent peers. MTFC training for community families emphasizes behaviour management methods to provide the youth with a structured and therapeutic living environment.'<sup>112</sup>

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110 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 18.

111 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 18.

112 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, pp 18–19

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### ***Coordinated services***

1.147 This category refers to 'programs for juvenile offenders where the “treatment” was devoting resources to coordinating existing multi-agency resources in the community and focusing those resources on the youth. The purpose of this intervention approach is to use existing resources in the community more effectively. This approach has sometimes been called “wraparound” services.’<sup>113</sup>

### ***Other***

1.148 The Washington State Review makes note of other programs including juvenile sex offenders programs, 'scared straight' programs (where offenders visit prisons to gain a better understanding of the consequences of their current life path) and juvenile boot camps. The Washington State Review found that the latter two actually increased re-offending.<sup>114</sup>

### **Violent offender programs**

1.149 Willis and Moore note that, given the high rates of violent offending by Indigenous people, programs aimed at reducing the use of violence are important in reducing Indigenous incarceration rates. They also note that offenders with a violent history have a higher likelihood of re-offending than non-violent offenders.<sup>115</sup>

1.150 Programs that teach anger management can help reduce violent tendencies, although Howells and Day (2002) found that anger management alone was not enough to significantly prevent violent re-offending.<sup>116</sup> Anger management programs focus on identifying anger in the offence cycle, understanding it, modifying cognitive processing that supports anger and developing plans for managing anger after release.<sup>117</sup>

### **Family violence programs**

1.151 Family violence programs target perceptions and behaviour that promote violence towards women. Family violence programs in Australia often use cognitive

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113 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 21

114 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, pp 21–22.

115 Willis and Moore, *Reintegration of Indigenous Prisoners*, AIC Research and Public Policy Series No. 90, 2008. p. 62.

116 Howells and Day, *Grasping the Nettle: treating and rehabilitating the violent offender*, Australian Psychologist, Vol. 37 No. 3, 2002.

117 Willis and Moore, *Reintegration of Indigenous Prisoners*, AIC Research and Public Policy Series No. 90, 2008, p. 65.

behavioural approaches and focus on male-female relationships, power dynamics and the use of violence to establish control.<sup>118</sup>

### **Cognitive behavioural programs**

1.152 Cognitive behavioural approaches that seek to modify thought processes and behaviour form the basis for a range of programs. It has been shown to have success in treating prisoners in various countries such as the US and Canada. As a result, Cognitive behavioural programs are one of the most commonly recommended in the literature.

1.153 Aos et. al. found that cognitive behavioural programs typically reduced recidivism by about 7 to 8 per cent.<sup>119</sup>

1.154 However, Andrew Day (2003) cautions that Cognitive Behavioural Therapy (CBT) may not be as successful for Australian Indigenous people. He notes 'psychological interventions, such as those delivered within a cognitive-behavioural framework tend to emphasise individual factors and de-emphasise contextual or cultural factors.'<sup>120</sup>

1.155 This point is echoed by Willis and Moore (2008) who also note that CBT, developed for Western offenders, may not be as useful for Indigenous participants, suggesting approaches that use culture, community and the collectivist nature of Indigenous society.<sup>121</sup> CBT has been adapted for use with Maori offenders by incorporating practices based on the Maori world view, increasing the success rate of the program relative to traditional CBT.<sup>122</sup>

### ***Moral reconnection therapy***

1.156 Moral Reconnection Therapy (MRT) is 'a cognitive-behavioural program designed for treatment-resistant populations. The program involves a step-by-step process designed to raise offenders from low to high levels of moral development in order to reduce the chances of subsequent criminal behaviour.'<sup>123</sup>

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118 Willis and Moore, *Reintegration of Indigenous Prisoners*, AIC Research and Public Policy Series No. 90, 2008, p. 63.

119 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 8.

120 Andrew Day, *Reducing the Risk of re-offending in Australian Indigenous offenders: what works for whom?* Journal of offender rehabilitation 37(2) 2003 p. 4.

121 Willis and Moore, *Reintegration of Indigenous Prisoners*, AIC Research and Public Policy Series No. 90, 2008.

122 Nathan, Wilson and Hillman, *Te Whakakotahitanga: an evaluation of the Te Piriti Special Treatment Program*, New Zealand Corrections, 2003.

123 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 29.

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### ***Reasoning and rehabilitation***

1.157 Reasoning and Rehabilitation (R&R) is described by the Washington State Review as 'a program designed to teach social-cognitive skills to offenders. It is based on the premise that offenders lack the cognitive skills and attitudes essential for social competence and that acquiring such skills will better enable them to achieve success in legitimate pursuits and withstand pressures toward criminal behaviour. The central goals are to modify offenders' impulsive, rigid, and illogical thinking patterns in favour of thought before action and consideration of behavioural consequences.'<sup>124</sup>

### **Alcohol and drug treatment**

1.158 The most common types of substance abuse programs in prison are brief, aim to educate and are group oriented. Group discussion is used to raise personal issues, facilitate recognition of the problem and motivate attendance. Programs are educational in nature, focussing on the effects of drug-taking for both mind and body. Offenders learn of the link between drug-taking and offending and teach harm-minimisation strategies. Many of these programs use cognitive behavioural therapy to modify thoughts and behaviour.<sup>125</sup>

1.159 Aos et. al. found that alcohol and drug rehabilitation programs were mildly successful at reducing recidivism, with re-offending reduced by between 3 and 17 per cent. Given the low average cost of programs examined in their study, they found that investment in these programs typically yielded a positive economic result.<sup>126</sup>

1.160 Given the major role played by alcohol in Indigenous offending, programs that reduce dependence on and use of alcohol are likely to be particularly important. This was a point made by Don Weatherburn at the committee's hearing in Sydney.

### ***In-prison and non-prison therapeutic community***

1.161 Therapeutic community programs involve 'group and individual interaction, including peer counselling, confrontation, cognitive and behavioural restructuring, recovery education, and 12-step activities.'<sup>127</sup>

1.162 The in-prison approach 'provides a separate residential facility within a prison and incorporates the basic approaches employed in the therapeutic community (TC)

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124 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 30.

125 Willis and Moore, *Reintegration of Indigenous Prisoners*, AIC Research and Public Policy Series No. 90, 2008, p. 65.

126 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 23.

127 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 24.

mode of drug treatment.<sup>128</sup> Community aftercare can be provided to facilitate 'follow-up drug treatment (usually outpatient) once the offender is released to the community.'<sup>129</sup>

1.163 The therapeutic community approach can also be delivered through community-based facilities. The Washington State Review found this approach reduced re-offending significantly (17 per cent), but as only two programs had been properly evaluated, the margin of error was very high and they could not be confident of the validity of their finding.<sup>130</sup>

### ***In prison substance abuse treatment***

1.164 The Washington State Review states that 'a diverse collection of treatment interventions for substance abusing offenders have operated in prisons, including drug education, group and individual therapy, and relapse prevention. The programs are usually non-residential (that is, inmates receiving treatment are not housed in separate quarters), and the length of treatment ranges from several weeks to approximately six months.'<sup>131</sup>

### ***Drug courts***

1.165 The Washington State Review states that a typical drug court 'targets non-violent offenders whose current involvement with the criminal justice system stems primarily from substance addiction. Defendants eligible for a drug court are identified soon after arrest and, if accepted, are referred to a treatment program. The court usually requires several contacts per week (often daily) with a treatment provider. Frequent urinalysis tests and regular status hearings with the drug court judge are key elements. Many drug courts require participants to maintain employment and honour financial obligations, including court fees and child support, as well as performing community service.'<sup>132</sup>

### ***Case management or community based substance abuse treatment***

1.166 Another category assessed by the Washington State Review involves community programs where 'offenders in the community are often referred to

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128 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 24.

129 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 24.

130 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 24.

131 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 25

132 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 25

substance abuse treatment through a case management program, which provides a liaison between the criminal justice system and treatment programs. These programs usually assess offender needs, provide a monitoring function, and either provide or refer offenders to services. Community-based treatment usually involves outpatient substance abuse treatment and, to a lesser extent, residential treatment.<sup>133</sup>

1.167 'Community-based treatment for offenders usually involves outpatient substance abuse treatment and, to a lesser extent, residential treatment, with a limited number of offenders participating in methadone maintenance programs.'<sup>134</sup>

### **Sex offender programs**

1.168 Willis and Moore (2008) note that the treatment of sex offenders is complex, in part because of the differences between offenders, including sexual preference, tendency towards violence and motivation.<sup>135</sup>

#### ***Cognitive behavioural sex offender treatment***

1.169 According to the Washington State Review, 'this treatment type has emerged as the principal type of sex offender treatment and most recent evaluations of sex-offender treatment has been conducted on this type of program. The cognitive-behavioural approach targets reducing deviant arousal, increasing appropriate sexual desires, improving social skills, and modifying distorted thinking. In particular, programs often focus on creating empathy for the victim. Program intensity ranges from around 44 hours to over 700. The treatment occurs both in-prison and in the community.'<sup>136</sup>

### **Adult offender intermediate programs**

1.170 The Washington State Review includes two types of intermediate programs (sanctions that fall between traditional probation and incarceration): Intensive supervision and adult boot camps. They do not give detailed descriptions.

1.171 Intensive supervision includes:

- Surveillance-oriented intensive supervision;
- Treatment-oriented intensive supervision; and

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133 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 26.

134 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 26.

135 Willis and Moore, *Reintegration of Indigenous Prisoners*, AIC Research and Public Policy Series No. 90, 2008, p. 65.

136 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 27.

- Intensive supervision as an alternative to prison.

## **Other adult programs**

### ***Work release programs***

1.172 Work release programs 'permit selected prisoners (or, in some cases, jail inmates) nearing the end of their terms to work in the community, returning to prison or community residential facilities for the non-working hours. The programs are designed to prepare inmates to return to the community in a relatively controlled environment. Work release also allows inmates to earn income, reimburse the state for part of their confinement, build up savings for their eventual release, and acquire more positive living habits.'<sup>137</sup>

### ***Job counselling/search for leaving inmates***

1.173 As the Washington State Review describes, 'efforts to improve the labour market performance of ex-offenders are based on the theory that employed ex-offenders are less likely to commit new crimes. One class of programs focuses on job search and employment counselling. In general, these programs attempt to link offenders with certain marketable skills to specific employers.'<sup>138</sup>

### ***In prison basic or vocational education***

1.174 The Washington State Review states that 'a premise of adult basic education is that many inmates lack basic abilities in reading, writing, and mathematics and if these skills are increased, offenders may have a better chance of avoiding criminal behaviour when released from prison.'<sup>139</sup>

1.175 'Many adult offenders in the criminal justice system have poor job market skills and records. Vocational education for inmates is intended to improve the likelihood of post-prison employment and thereby decrease the chance of subsequent criminal activity. Vocational education can include, for example, improving work-related math skills for the automotive or construction trades. Some programs offer in-prison apprenticeships and an accreditation element that can make it easier for offenders to obtain trade licenses.'<sup>140</sup>

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137 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 30.

138 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 31.

139 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 31.

140 Aos, Phipps, Barnoski and Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime v4.0*, Washington Institute for Public Policy, May 2001, p. 31.



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### ***Correctional industries program***

1.176 Correctional industries use the labour of prisoners with a view to both developing the skills of inmates and recouping some of the cost of an inmate's incarceration. Correctional industry programs are run in several Australian states.

### **Early childhood and adolescent intervention**

1.177 The categories above all feature programs run within the corrective services system. However, some research into reducing recidivism also focuses on early and mid-childhood interventions. Aos, Phipps, Barnoski and Lieb (2001) found that programs such as nurse home visitation for low income single mothers, early childhood education for disadvantaged youth, and various youth development initiatives in low income areas reduced offending in the cohorts targeted by between 4 and 31 per cent.

1.178 At a private meeting of the committee with the National Children's Services Forum in August last year, representatives of the Secretariat of National Aboriginal and Islander Child Care suggested that early childhood care was extremely important in preventing later juvenile offending. They informed the committee that support in a child's early years had a strong insulation affect against later bad behaviour.<sup>141</sup> The information is anecdotal, such as that from Gundoo Daycare in Cherbourg, QLD. The centre is hoping to attract funding or support for quantitative and qualitative research into cohorts who went through their early child care program between 1989 until now.

## **Which programs work best?**

1.179 Drake, Aos and Miller (2009), aggregated the results of hundreds of different evaluations of programs aimed at reducing offending. Their latest results are presented in Table 6 below.

1.180 The key measurement is the per cent change in crime outcomes in the second column. This figure reflects the per cent reduction in offending rates as a result of an average program of that type. A program that reduces recidivism by 10 per cent may reduce the recidivism rate from, for example, 60 per cent to 54 per cent (the recidivism rate falls 6 percentage points, representing a 10 per cent decrease). The figure in brackets indicates the number of suitable studies on that particular type of program used in the analysis.

1.181 The authors adopted a conservative approach to assessing the change in crime outcomes resulting from a program. Robust evaluation studies that were well-designed and implemented were weighted more highly than those that were not. To be included in the study at all, evaluations had meet minimum quality requirements. Full details of this process can be found in the paper cited above.

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141 Committee private meeting notes, 17 August 2009.

1.182 The abridged table provided here only includes programs shown to have resulted in a statistically significant reduction in crime rates. The estimated costs and benefits of programs are calculated for Washington State and may not be analogous to the Australian context. The results, while significant, serve as a guide only.

**Table 6: Abridged summary of program evaluations by Drake, Aos and Miller (2009)**

| Program Type                                                     | Per cent change in crime outcomes; (number of evidence-based studies on which estimate is based) | Benefits and costs (per participant, net present value, 2007 US dollars) |                      |                                                                |                                      |
|------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|----------------------|----------------------------------------------------------------|--------------------------------------|
|                                                                  |                                                                                                  | Benefits to crime victims                                                | Benefit to taxpayers | Costs (marginal program cost, compared to cost of alternative) | Benefits minus costs per participant |
| <b>Adult Offenders</b>                                           |                                                                                                  |                                                                          |                      |                                                                |                                      |
| Vocational education in prison                                   | -9.8% (4)                                                                                        | \$14,504                                                                 | \$7,419              | \$1,210                                                        | \$20,714                             |
| Intensive supervision: treatment-oriented programs               | -17.9% (11)                                                                                      | \$16,239                                                                 | \$10,235             | \$7,356                                                        | \$19,118                             |
| Washington's Dangerously Mentally Ill Offender Program           | -20.7% (1)                                                                                       | \$30,732                                                                 | \$15,720             | \$27,617                                                       | \$18,836                             |
| General education in prison (basic education or postsecondary)   | -8.3% (17)                                                                                       | \$12,319                                                                 | \$6,302              | \$985                                                          | \$17,636                             |
| Cognitive-behavioural therapy in prison or community             | -6.9% (25)                                                                                       | \$10,234                                                                 | \$5,235              | \$107                                                          | \$15,361                             |
| Correctional industries in prison                                | -6.4% (4)                                                                                        | \$9,518                                                                  | \$4,869              | \$427                                                          | \$13,961                             |
| Drug treatment in prison (therapeutic communities or outpatient) | -6.4% (21)                                                                                       | \$9,498                                                                  | \$4,859              | \$1,642                                                        | \$12,715                             |
| Drug treatment in community                                      | -8.3% (6)                                                                                        | \$7,471                                                                  | \$4,972              | \$588                                                          | \$11,856                             |
| Adult drug courts                                                | -8.7% (57)                                                                                       | \$7,798                                                                  | \$5,190              | \$4,474                                                        | \$8,514                              |
| Employment and job training in the community                     | -4.6% (16)                                                                                       | \$4,147                                                                  | \$2,614              | \$409                                                          | \$6,351                              |
| Sex offender treatment in prison with aftercare                  | -9.6% (6)                                                                                        | \$12,901                                                                 | \$4,044              | \$12,881                                                       | \$4,064                              |
| Washington's work release from prison                            | -1.3% (1)                                                                                        | \$1,835                                                                  | \$1,069              | \$615                                                          | \$2,288                              |
| Intensive supervision: surveillance-oriented programs            | 0% (23)                                                                                          | \$0                                                                      | \$0                  | \$3,869                                                        | -\$3,869                             |

|                                                                    |            |          |          |          |          |  |
|--------------------------------------------------------------------|------------|----------|----------|----------|----------|--|
| <b>Juvenile offenders</b>                                          |            |          |          |          |          |  |
| Multidimensional treatment foster care (versus regular group care) | -17.9% (3) | \$69,519 | \$26,360 | \$6,926  | \$88,953 |  |
| Functional family therapy on probation                             | -18.1% (7) | \$35,470 | \$16,686 | \$2,380  | \$49,776 |  |
| Adolescent diversion project (for lower risk offenders)            | -17.6% (6) | \$34,318 | \$16,145 | \$1,975  | \$48,488 |  |
| Family integrated transitions                                      | -10.2% (1) | \$39,678 | \$15,045 | \$9,970  | \$44,753 |  |
| Sex offender treatment                                             | -9.7% (5)  | \$49,443 | \$8,061  | \$33,842 | \$23,662 |  |
| Aggression replacement training                                    | -8.3% (4)  | \$16,276 | \$7,657  | \$918    | \$23,015 |  |
| Multisystemic therapy                                              | -7.7% (10) | \$15,001 | \$7,057  | \$4,364  | \$17,694 |  |
| Teen courts                                                        | -14.0% (5) | \$11,401 | \$5,507  | \$937    | \$15,971 |  |
| Restorative justice for low risk offenders                         | -8.0% (21) | \$6,479  | \$3,130  | \$907    | \$8,702  |  |
| Interagency coordination programs                                  | -1.9% (14) | \$3,726  | \$1,753  | \$210    | \$5,269  |  |
| <b>Prevention programs</b>                                         |            |          |          |          |          |  |
| Pre-K education for low-income 3- and 4-year-olds                  | -16.6% (8) | \$9,882  | \$5,579  | \$612    | \$14,848 |  |
| Nurse family partnership: effect on children                       | -15.7% (1) | \$8,515  | \$4,808  | \$756    | \$12,567 |  |
| Nurse family partnership: effect on mothers                        | -38.2% (1) | \$8,093  | \$5,676  | \$5,580  | \$8,189  |  |

*Notes: Abridged from Table 1: Reducing crime with evidence-based options: What works and analysis of benefits and costs, in Drake, Aos and Miller, Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State, Victims and Offenders, 4:170–196, 2009.*

1.183 The programs shown to have the greatest impact on recidivism are those aimed at juveniles such as functional family therapy on probation, multi-dimensional treatment foster care and adolescent diversion for low risk offenders.

## **Principles for good programs**

1.184 Many studies internationally have sought to establish principles of best practice for correctional programs. However, some researchers have urged caution in applying these results to Indigenous populations given differences in culture and background.

1.185 Cunneen and Luke (2007) note that governments can become fixated on recidivism as the sole measurement of success of rehabilitation programs. They suggest that attention is also given to other measures such as employability, health and education. They caution that recidivism statistics are often measured over the short term (recidivism within two years appears to be a common measure used by agencies such as the Productivity Commission). They express concern that research too often focuses on 'criminogenic needs' and recidivism, neglecting traditional social integration outcomes.

1.186 They argue that a focus by government on simple performance measures such as re-offending, however it is measured, leads to a distorted view of 'what works' discounting social integration and other beneficial outcomes. This can lead to the closure of valuable criminal justice interventions.<sup>142</sup>

1.187 Nevertheless, there are some key principles that have been recommended in various studies on rehabilitation programs.

### ***Programs should address the causes of offending***

1.188 Don Weatherburn noted, in evidence to the committee in October 2009, that unless non-custodial sentencing options involved actual treatment for the causes of offending, they were likely to become merely a rung on the ladder to a custodial sentence later on.<sup>143</sup> Similarly, the Assistant Commissioner for Corrective Services in NSW informed the committee that incarceration alone has a criminogenic (increases propensity to commit crime) effect.<sup>144</sup> This would suggest that a focus on rehabilitation in prison is needed, lest incarceration merely serves to further criminalise prisoners.

1.189 Research suggests that programs in both custodial and non-custodial environments will be most effective if they address underlying causes of offending.

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142 Cunneen and Luke, *Recidivism and the Effectiveness of Criminal Justice Interventions*, Current Issues in Criminal Justice, Vol. 19, No. 2, November 2007, p. 199

143 Dr Don Weatherburn. BOSCAR, *Committee Hansard*, 15 October 2009, p. 22.

144 Mr Luke Grant, Corrective Services NSW, *Committee Hansard*, 15 October 2009, p. 78.

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***Programs should be intensive***

1.190 Willis and Moore (2008) stress the importance of delivering treatment programs for long enough duration to be effective. They recommend at least 100 hours with daily contact as being optimal.<sup>145</sup> Howells and Day (1999) also quote Canadian research suggesting that treatments should last at least 100 hours and take place over a minimum of 3–4 months.<sup>146</sup>

***Prisoners/Offenders should be assessed upon entry to correctional facilities to determine tailored treatments***

1.191 Many of the principles for good programs require a detailed knowledge of the offender. Assessment of each prisoner/offender is a necessary first step as it allows targeting of therapeutic programs. For instance, prisoners can be assessed for drug and alcohol dependency or mental health problems.

1.192 Willis and Moore (2008) note that programs need to be responsive to each individual offender to get the best results from programs. They also suggest that prisoners be systematically assessed for the risk of re-offending based on their personal history and that programs should be matched to risk level, with the higher risk categories receiving the more intensive treatment. They note however, that offenders in the highest risk category may be very difficult to treat and may not be amenable to intervention.<sup>147</sup>

***Programs should target criminogenic needs – the psychological factors leading to crime***

1.193 The current conventional wisdom in criminology appears to be that treatment should focus on remedying criminogenic needs – those thinking and behaviour deficits that are likely to lead to further criminal behaviour. The logic of this approach is that criminogenic needs are most closely associated with re-offending.

1.194 'Criminogenic needs' include such risk factors as pro-criminal attitudes, criminal associates, substance abuse, anti-social personality and hostility or anger. Non-criminogenic needs include self-esteem, anxiety, feelings of alienation and psychological discomfort as a result of offending, and an attachment to group cohesion.<sup>148</sup>

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145 Willis and Moore, *Reintegration of Indigenous Prisoners*, AIC Research and Public Policy Series No. 90, 2008, p. 62.

146 Howells and Day, *The Rehabilitation of Offenders: international perspectives applied to Australian correctional systems*, AIC Trends and issues No. 112, 1999, p. 4.

147 Willis and Moore, *Reintegration of Indigenous Prisoners*, AIC Research and Public Policy Series No. 90, 2008, p. 61.

148 Howells and Day, *The Rehabilitation of Offenders: international perspectives applied to Australian correctional systems*, AIC Trends and issues No. 112, 1999, p. 4.

1.195 However, some scholars, such as Cunneen and Luke (2008) and Gilbert and Wilson (2009) are critical of this approach. Cunneen and Luke comment that a narrow focus on criminogenic needs neglects broader social welfare goals such as employment, education and accommodation.<sup>149</sup>

***Programs should target those at the highest risk of re-offending***

1.196 Research such as that by Canadian researchers Andrews and Bonta suggests that the greatest returns from investment in rehabilitation come from treating offenders who are at high risk of re-offending.

***Programs should be matched to clients learning styles and cultural background***

1.197 In keeping with the general recommendation to target and tailor programs, language and cultural considerations should be considered in designing a program. Gilbert and Wilson (2009) note that Indigenous offenders may require a more holistic approach to therapy rather than merely focussing on criminogenic needs. They note that the special nature of Indigenous offenders, with typically high levels of grief, depression, loss of cultural identity and educational deficits require a more holistic therapeutic response.<sup>150</sup>

1.198 Gilbert and Wilson also note that Indigenous people are more likely to drop out of existing programs.<sup>151</sup> Wilson and Moore (2008) found in interviews with offenders that the lack of Indigenous specific programs and services was a major barrier to Indigenous participation.<sup>152</sup> Howells et al. (2004) note that the use of English language and complex jargon is a significant barrier to program effectiveness.<sup>153</sup>

1.199 Yavu-Kama-Harathunian (2002) argues that in addition to Indigenous content, programs will be more successful if they are designed and run by Indigenous facilitators. She notes that reparation, empathy and reconciliation have particular

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149 Cunneen and Luke, *Recidivism and the Effectiveness of Criminal Justice Interventions*, Current Issues in Criminal Justice, Vol. 19, No. 2, November 2007, p. 199.

150 Gilbert and Wilson, *Staying Strong on the Outside; improving the post-release experience of Indigenous young adults*, Indigenous Justice Clearinghouse Research Brief No. 4, 2009, p. 4.

151 Gilbert and Wilson, *Staying Strong on the Outside; improving the post-release experience of Indigenous young adults*, Indigenous Justice Clearinghouse Research Brief No. 4, 2009, p. 4.

152 Willis and Moore, *Reintegration of Indigenous Prisoners*, AIC Research and Public Policy Series No. 90, 2008.

153 Howells et al, *Correctional offender rehabilitation programs: the national picture in Australia*, Forensic Psychology Research Group, University of South Australia, 2004.

cultural significance in the Indigenous world view, and could be successfully incorporated into rehabilitation programs.<sup>154</sup>

***Programs should use existing social networks***

1.200 Social networks exert a strong influence on members within the network. Criminal associates can inhibit reintegration, while the support of family, friends and the community can assist. Programs that use pre-existing social networks as part of the treatment can assist with reintegration. The use of Elders in program facilitation is one way to use existing social networks to maximise the effectiveness of rehabilitation.

1.201 The shame felt by some offenders as a result of their offence may mean they have difficulty returning to their own community, leading to further social isolation upon release.

1.202 Prisoner's social networks come under strain during imprisonment, and the weakening of relationships with those outside prison may make reintegration all the more difficult. Studies internationally have found that prisoners who maintained their relationships while in prison were less likely to re-offend.<sup>155</sup>

1.203 Many of the violent offenders interviewed by Willis and Moore (2008) noted that treatment for substance abuse and violence needed to be given to members of their community as well. They feared returning to a community riven with alcohol and violence would lead to them re-offending, despite their custodial treatment programs.<sup>156</sup>

***Programs should be evaluated for success***

1.204 Aos et al (2001) suggest that evaluation of programs is very important as not all programs are successful. They note that in many US states, little evaluation takes place. Conducting regular evaluation is costly, but means that successful programs can be expanded, while poorly performing programs can be retired. This is important considering Dr Weatherburn's comments that, all too often, state governments in Australia have trouble progressing successful programs past pilot stage.<sup>157</sup> The secretariat also notes from conversations with Commonwealth, state and territory justice officials, that program evaluation is a matter of concern in Australia.

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154 Yavu-Kama-Harathunian, *The therapeutic needs of Indigenous violent and sex offender males, how they can be addressed*, paper presented at Probation and Community Corrections: Making the Community Safer conference, AIC, Perth, 23–24 September 2002.

155 Solomon et al, *Understanding the challenges of prisoner re-entry: research findings from the Urban Institute's Prisoner Re-entry Portfolio*, Washington DC, Urban Institute, 2006.

156 Willis and Moore, *Reintegration of Indigenous Prisoners*, AIC Research and Public Policy Series No. 90, 2008.

157 Dr Don Weatherburn. BOSCAR, *Committee Hansard*, 15 October 2009, pp 31–32.



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***Programs should provide 'throughcare'***

1.205 For maximum effectiveness, programs that commence within correctional facilities should be continued within the community upon release. Throughcare refers to continuity in therapy before and after release. Aftercare refers to continued support following the completion of formal treatment.

1.206 The idea of throughcare is to prepare offenders for reintegration into the community, commencing at the beginning of their sentence and continuing post-release until they are successfully reintegrated. Gilbert and Wilson (2009) note that cognitive behavioural programs such as anger management or substance abuse programs require reinforcement in real world settings.<sup>158</sup> This may be particularly difficult where offenders return to regional and remote communities where, currently, correctional support is costly and severely limited.

1.207 Willis and Moore (2008) found that many prisoners experienced a significant split in the type of program that was available to them through community based corrections following their release from prison. The lack of continuity reduced the quality of the rehabilitation.<sup>159</sup>

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158 Gilbert and Wilson, *Staying Strong on the Outside: improving the post-release experience of young Indigenous adults*, Indigenous Justice Clearinghouse, Brief 4, February 2009.

159 Willis and Moore, *Reintegration of Indigenous Prisoners*, AIC Research and Public Policy Series No. 90, 2008, p. 89.

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## The economics of corrective services reform

1.208 The following discussion examines the economics of state investment in corrective services. It includes data on the costs of imprisonment, indicating that the construction and maintenance of a prison system represents a significant burden on the Australian taxpayer. In light of this, innovations in the criminal justice system that reduce imprisonment and improve offender rehabilitation have the potential to result in significant social and economic benefits.

### Cost of corrective services

1.209 Corrective services and keeping people in prison in particular is very expensive for the taxpayer. The Productivity Commission collects data on expenditure on prisons and community-based offender management on an aggregate and per prisoner per day basis. The most recent data, for 2007–08 is displayed below in Tables 6 and 7.

1.210 Altogether, states and territories spent \$2.7 billion on prisons and \$274 million on community corrections in 2007–08.<sup>160</sup> The annual recurring cost for a prisoner per year (ignoring the costs of prison construction) is approximately \$75 000, based on the national average daily cost per prisoner of \$206.80.<sup>161</sup> If capital costs are considered, this figure increases to almost \$100 000. The cost of the court system and policing is also relevant, as these costs could arguably be reduced if rates of offending can be decreased. The total cost of the Australian justice system for 2007–08 has been calculated as \$10.7 billion, of which \$7.2 billion is spent on police services.<sup>162</sup>

1.211 Note that the cost of detaining a juvenile is likely to be much more expensive. For instance, the Law Reform Commission of Western Australia calculated that it cost \$173 000 per year to keep a juvenile in detention, compared to approximately \$100 000 for an adult offender.<sup>163</sup>

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160 Productivity Commission, *Report on Government Services 2009*.

161 Productivity Commission, *Report on Government Services 2009*.

162 Productivity Commission, *Report on Government Services 2009*.

163 Law Reform Commission of WA, *Court Intervention Programs: Final Report*, June 2009, p. 11.

*Table 7: Expenditure on prisons and community corrections (\$million) 2007–08*

|                                             | NSW         | Vic        | Qld        | WA         | SA         | Tas       | ACT       | NT        | Aust        |
|---------------------------------------------|-------------|------------|------------|------------|------------|-----------|-----------|-----------|-------------|
| <b>Prisons</b>                              |             |            |            |            |            |           |           |           |             |
| Net recurrent expenditure                   |             |            |            |            |            |           |           |           |             |
| Open plus periodic detention                | 266         | 29         | 47         | 66         | 12         | 4         | 8         | na        | 431         |
| Secure                                      | 491         | 308        | 315        | 247        | 109        | 44        | 17        | na        | 1531        |
| All prisons                                 | 757         | 338        | 362        | 312        | 120        | 49        | 25        | 52        | 2015        |
| Capital expenditure, all prisons            | 252         | 88         | 167        | 59         | 27         | 10        | 1.5       | 6         | 610         |
| Total net recurrent and capital expenditure | <b>1009</b> | <b>426</b> | <b>528</b> | <b>371</b> | <b>148</b> | <b>59</b> | <b>26</b> | <b>58</b> | <b>2625</b> |
| Transport and escort services               | 45          | 8          | 9          | na         | 2          | na        | 2         | na        | 66          |
| Payroll tax                                 |             |            |            |            |            |           |           |           |             |
| Open plus periodic detention                | 11          | 0.8        | 0.9        | ..         | 0.4        | 0.1       | ..        | na        | 13          |
| Secure                                      | 19          | 6          | 6          | ..         | 4          | 1.4       | ..        | na        | 37          |
| All prisons                                 | 30          | 7          | 7          | ..         | 4          | 2         | ..        | 2         | 52          |
| <b>Community corrections</b>                |             |            |            |            |            |           |           |           |             |
| Net recurrent expenditure                   | 81          | 46         | 47         | 43         | 27         | 4         | 7         | 7         | 263         |
| Capital expenditure                         | 3           | 1          | 2          | 3          | 2          | –         | 0.1       | 0.1       | 11          |
| Total net recurrent and capital expenditure | <b>84</b>   | <b>47</b>  | <b>49</b>  | <b>46</b>  | <b>29</b>  | <b>4</b>  | <b>7</b>  | <b>8</b>  | <b>274</b>  |
| Payroll tax                                 | 4           | 1.5        | 2          | –          | 1.1        | 0.2       | –         | 0.3       | 8           |

**Table 8: Cost per prisoner and offender (\$ per day), 2007–08**

|                                                            | Units  | NSW          | Vic          | Qld          | WA           | SA           | Tas          | ACT          | NT           | Aust         |
|------------------------------------------------------------|--------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| <b>Prisons</b>                                             |        |              |              |              |              |              |              |              |              |              |
| Net recurrent costs                                        |        |              |              |              |              |              |              |              |              |              |
| Open plus periodic detention                               | \$/day | 187.7        | 190.6        | 202.0        | 174.1        | 159.5        | 203.5        | 233.3        | na           | 189.2        |
| Secure                                                     | \$/day | 225.3        | 224.8        | 177.5        | 243.8        | 179.9        | 254.1        | 442.6        | na           | 214.3        |
| All prisons                                                | \$/day | <b>210.5</b> | <b>221.4</b> | <b>180.3</b> | <b>224.9</b> | <b>177.7</b> | <b>248.5</b> | <b>348.6</b> | <b>163.8</b> | <b>206.8</b> |
| Capital costs                                              |        |              |              |              |              |              |              |              |              |              |
| Total user cost of capital                                 | \$/day | 53.5         | 16.1         | 60.8         | 34.0         | 28.4         | 39.6         | 14.8         | 12.5         | 42.9         |
| Land                                                       | \$/day | 3.6          | 2.8          | 3.6          | 2.4          | 8.3          | 1.0          | 9.6          | 0.7          | 3.5          |
| Other assets                                               | \$/day | 49.9         | 13.3         | 57.2         | 31.6         | 20.2         | 38.6         | 5.2          | 11.8         | 39.4         |
| Debt servicing fees                                        | \$/day | ..           | 26.7         | ..           | ..           | ..           | ..           | ..           | ..           | 4.2          |
| Depreciation                                               | \$/day | 16.6         | 14.8         | 22.3         | 8.6          | 12.2         | 11.8         | 5.7          | 5.2          | 15.6         |
| Total capital cost                                         | \$/day | 70.1         | 57.6         | 83.1         | 42.6         | 40.6         | 51.3         | 20.5         | 17.7         | 62.6         |
| Total net recurrent and capital costs per prisoner per day | \$/day | <b>280.6</b> | <b>278.9</b> | <b>263.3</b> | <b>267.5</b> | <b>218.3</b> | <b>299.8</b> | <b>369.1</b> | <b>181.5</b> | <b>269.4</b> |
| <b>Community corrections</b>                               |        |              |              |              |              |              |              |              |              |              |
| Net recurrent costs                                        |        |              |              |              |              |              |              |              |              |              |
| Net recurrent costs                                        | \$/day | 12.4         | 16.2         | 9.5          | 21.7         | 11.7         | 10.5         | 12.8         | 17.7         | 13.1         |
| Capital costs                                              | \$/day | 0.4          | 0.4          | 0.4          | 1.4          | 0.7          | –            | 0.2          | 0.2          | 0.5          |
| Total net recurrent and capital costs per offender per day | \$/day | <b>12.9</b>  | <b>16.6</b>  | <b>9.9</b>   | <b>23.1</b>  | <b>12.4</b>  | <b>10.5</b>  | <b>13.0</b>  | <b>18.0</b>  | <b>13.7</b>  |

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## **An investment approach to corrective services**

1.212 The increasing number of prisoners and offenders in community based corrections is expensive for the Australian taxpayer. As shown above, Australian governments spent \$2.7 billion on prisons and \$274 million on community corrections in 2007–08. A further \$7.2 billion was spent on police forces.

1.213 In addition to the cost borne by the taxpayers, the impact of offending on victims of crime is even more significant, and needs to be considered in any analysis of the benefits of successful rehabilitation.

1.214 The cost of incarcerating a prisoner has been calculated at up to \$100 000 per year per prisoner. Any program or innovation that reduces offending or recidivism can save significant amounts from future decreased expenditure on the criminal justice system, and prisons in particular. In addition, reduced recidivism means less offending and hence less future victims of crime.

1.215 Government expenditure on corrective services can be viewed as an investment decision. For every dollar of taxpayers' money that is invested in successful correctional programs, there is a return on that investment in terms of less money that is required for the criminal justice system. In addition, there is a reduction in the number of crime victims and social benefits to the offenders themselves.

1.216 Aos et. al, analysed a broad range for programs for both juvenile and adult offenders in a study for the Washington State Institute of Public Policy. The study aggregates the results of hundreds of evaluations of programs to calculate average effect on recidivism for specific categories of programs. The results of this study were presented in Table 5 above.

1.217 The authors then used the overall estimated cost of each program and the effect on recidivism to calculate the economic return of each program. They found that the most successful program, multi-systemic therapy, cost almost \$5000 per offender, but reduced recidivism by over 30 per cent. They calculated that this investment would save Washington State taxpayers over \$30 000 in avoided expenditure on the criminal justice system per person treated. When the impact on victims of crime was included, the initial \$5000 investment would result in over \$130 000 of savings to both taxpayers and victims. This did not include other social benefits such the improved earning potential of a rehabilitated offender, education, health or welfare outcomes.

1.218 The authors noted that even programs with a small effect on recidivism could result in net benefits to taxpayers and society, if the costs of delivery were small.

1.219 This raises an important point regarding regional and remote Indigenous communities. The program costs used in the Aos et. al. paper are calculated for Washington State in the USA and are likely to be significantly cheaper than similar programs delivered in remote Indigenous communities. Programs that are economical

in Washington State may not be in remote Australia. However, it should be emphasised that this study does not take into account many of the social benefits that could properly be considered part of the economic equation.

1.220 In conclusion, the high cost of running an ever-expanding criminal justice system represents a significant opportunity cost. This means that therapeutic programs or other innovations in the criminal justice system could be very costly, yet be cheaper than the status quo of relying on imprisonment as a deterrent.

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## What is being done in Australia?

1.221 Moving from the theoretical analysis of different types of programs, this section outlines the national approach to responding to Indigenous Australians contact with the criminal justice system and outlines the practical responses that the Commonwealth as well as each state and territory government is undertaking.

1.222 From the recent (November 2009) development of a national framework that outlines overarching principles, right through to the programs for alternative courts and sentencing options as well as rehabilitation and post-release programs, there is some positive action. Without these approaches, arguably, Indigenous Australian's contact with the criminal justice system would be more frequent and longer lasting. Nevertheless, Australia's approach can and should continue to improve based on evidence based and successful approaches, adapted to local circumstances.

1.223 This section is restricted to programs and initiatives of Australian governments. Non-government organisations also run a variety of programs not covered here.

### **National Indigenous Law and Justice Framework**

1.224 On 6 November 2009, the Australian and State and Territory governments endorsed the National Indigenous Law and Justice Framework. Agreement to the Framework followed significant consultation across governments, non-government organisations and other key stakeholders.

1.225 The National Indigenous Law and Justice Framework is a national approach to address the interaction between Indigenous Australians and justice systems in Australia.

1.226 The Framework has been developed by the Standing Committee of Attorneys General. This Framework sets the national action on Indigenous Australia's access to the criminal justice system. It drives the national considerations through the Council of Australian Governments, relevant ministerial councils (for example, the Standing Committee of Attorneys General) as well as Commonwealth, state, territory and local government programs such as those outlined below.

1.227 The Framework does not prescribe any actions, but rather, it sets out an agreed 'good governance' evidence-based approach which government agencies and other service providers can utilise to flexibly develop their policies. This will enable national consistency while allowing flexibility for local needs, jurisdictional priorities and resource capacity.

1.228 Through the national approach, it is designed to support the COAG agenda to Close the Gap in Indigenous disadvantage. The Framework also provides an opportunity for governments, non-government and community organisations, and Indigenous Australians to develop appropriate responses.

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## **Australian Government programs to address Indigenous incarceration**

1.229 The Commonwealth Attorney-General's Department has provided funding for some discreet initiatives that address Indigenous interaction with the criminal justice system, including the following:

1.230 The Indigenous Justice Program is a program aimed at facilitating the development and implementation of effective culturally relevant projects, especially where youth are at risk. The program seeks to use cultural knowledge and identity to achieve outcomes on the ground. The program provides funding for Australian Indigenous communities with the highest need. In 2009–10, funding for the program totals \$12 million, which includes \$3.5 million for the Petrol Sniffing Strategy and \$2 million for Northern Territory Community Development Employment Projects. The program seeks to complement state and territory initiatives.

1.231 The Attorney-General's Department also provides funding for night patrol services across 81 communities in the Northern Territory. This funding provides for early intervention services to stop offences occurring.

1.232 The Attorney-General's Department also provides funding to Aboriginal and Torres Strait Islander Legal Services to deliver Indigenous-specific legal aid services nationally. Services are provided to numerous permanent locations as well as court circuits, bush courts and outreach locations in metropolitan, regional and remote areas. This includes Koori Courts, Nunga Courts, Murri Courts and Aboriginal Courts. Funding of \$52.5 million has been allocated for Indigenous legal aid services in 2009–10. In 2008–09, 71 per cent of services were delivered in regional (44 per cent) and remote (27 per cent) locations.

1.233 The Family Violence Prevention (FVPLS) Program provides services through 31 FVPLS Units operating at the community level, using 19 service providers in high need service areas located throughout regional and rural Australia. Local community leaders are encouraged to take a lead role. The FVPLS program also promotes capacity building within Units by providing professional development training to ensure appropriate organisational structures, processes and systems are in place to facilitate effective operation of the Units.

## **Survey of state and territory programs**

1.234 In order to get develop an understanding of the current range of justice and correctional programs offered by states and territories in Australia, the committee wrote to the responsible minister in each jurisdiction. The committee requested information on the following:

- specific courts for Indigenous offenders;
- non-custodial sentencing options;
- custodial rehabilitation and therapeutic correction programs;
- post-release programs; and



- any other relevant correctional programs.

1.235 The committee requested details such as:

- the number of offenders who participate;
- a break down of Indigenous and non-Indigenous participants;
- the cost per offender and on what basis this is calculated;
- how the program is funded; and
- any evaluation of program outcomes that may be available, particularly the effect on recidivism rates.

1.236 The results of this audit are presented below for each state and territory. The responses from each jurisdiction will be made available on the committee's website.

## **Western Australia**

### ***Specific Courts for Indigenous Offenders***

#### *Aboriginal Sentencing Court Pilot of Karlgoolie (also known as Karlgoolie Community Court)*

1.237 The court commenced in November 2006 as a pilot program, following community consultation. It was established as a specialist court for both adults and juveniles under jurisdiction of the Magistrates Court. An evaluation of the court has been recently completed, but not public released.

1.238 To be eligible for the court, the defendant must plead guilty, be Aboriginal and consent to appearing before the court. Sexual offences and those related to family violence are excluded from the court's purview.

1.239 The physical layout of the court is designed to be more relaxing, with participants seated around an oval table at eye level. Aboriginal Elders/respected persons sit as panellists and play a cultural advisory role, provide background information about the defendant and their family. This information is meant to inform the Magistrate's sentencing decision.

1.240 The community court operates at the sentencing stage of proceedings. Sentences may be deferred in order for the offender to participate in diversionary or treatment programs before a final decision has been made.

#### *Geraldton Family and Domestic Violence Court (also known as the Barndimalgu Court).*

1.241 The Barndimalgu Court in Geraldton commenced operation in October 2006 as a pilot project. An Aboriginal Reference Group comprising local Geraldton Aboriginal community members worked in collaboration with the Western Australia

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and government agencies to formulate a model to address Indigenous imprisonment as well as family and domestic violence.

1.242 Since August 2007, the Barndimalgu Court has been an alternative pre-sentencing court for Aboriginal people on family and domestic violence charges. The Court diverts offenders to culturally appropriate Department of Corrective Services' programs which address violent behaviour. The Court aims to break the cycle of Indigenous violence by providing offenders with the option of programs to address their offending behaviour before they are sentenced.

1.243 The Barndimalgu Court is voluntary for Indigenous offenders that are identified as suitable candidates. Offenders are not sentenced until they either successfully complete their goals or are discharged from the Barndimalgu Court back to the mainstream Magistrates Court. If offenders successfully complete their treatment plans, this is taken into account at the time of sentencing.

1.244 The Court is conducted in an informal atmosphere. Participants speak in plain English, rather than using technical and legal terminology. Community members will provide the court with advice relating to cultural matters, offender background and other relevant information. A full evaluation is planned for 2010–11.

### ***Non-Custodial Sentencing Options***

1.245 Western Australia's response outlined a number of non-custodial sentencing options that are currently utilised. These include:

1.246 Section 39 of Part 5 of the *Sentencing Act 1995* which outlines sentencing options the courts may impose on a 'natural person'. For example:

- Conditional Release Order. This is for a maximum period of 24 months and includes a provision for surety but excludes supervision by a Community Corrections Officer or the payment of compensation/restitution.
- Fine. This is the most common form of sentencing outcome in Western Australia. It accounts for 75% of all final dispositions.
- Community Based Order (CBO). A CBO must be between 6 and 24 months. It consists of supervision and can include counselling/treatment or unpaid community work.
- Intensive Supervision Order (ISO). An ISO must be between 6 and 24 months. It must include at least one of the following: counselling and treatment; community service or a curfew requirement.
- Suspended Imprisonment. A court that sentences an offender to a term of imprisonment of 60 months or less may order that the whole of the term(s) be suspended for a period set by the court subject to a series of conditions.

### ***Court Intervention Programs***

1.247 The Western Australian justice system includes a number of court intervention programs. These can be either general in nature or address particular offences or offenders.

1.248 One program is Indigenous specific – the Indigenous Diversion Program (IDP). This program diverts Indigenous persons who have committed relatively minor offences and that have an alcohol and/or other drug problem. The program provides a culturally appropriate regional service instead of incarceration. At the completion of the program, an offender appears before the magistrate for final sentencing. Successful completion of the program can be a mitigating factor in sentencing.

1.249 Other diversionary programs include the Pre-sentence Opportunity Program (POP) and the Supervised Treatment Intervention Regime (STIR). These programs provide early intervention largely for offenders with low level (often first time) drug use issues. A range of other diversionary programs are in existence in Western Australia, including:

- The Perth Drug Court which aims to reduce illicit drug use and recidivism.
- Metropolitan Family and Domestic Violence Court. This court provides culturally appropriate services for Indigenous Australians.
- Intellectual Disability Diversion Program. This program helps divert people with a disability away from the justice system by developing a tailored plan to be developed and implemented to help support the person with a disability.
- Geraldton Alternative Sentencing Regime (GASR). The GASR commenced in August 2001 as an initiative to provide 'therapeutic, holistic and team based approach to dealing with offenders'. The GASR was designed to target offenders with substance abuse programs but it has subsequently been expanded to include alcohol, illicit drug and solvent abuse; domestic violence; gambling; and financial problems.

### ***Custodial Rehabilitation and Therapeutic Correction Programs***

1.250 Western Australia advise that placement of an offender on a treatment program is dependent on a number of variables separate to the offender such as the supervision level of the offender; recommendation of a Treatment Assessment; pre-group program interview/assessment and the availability of a place on the recommended program.

1.251 For access to programs, each program has assessment criteria which take into account the risk of re-offending; criminogenic needs and the motivation to undertake a program.

1.252 Other factors taken into account include: mental health; intellectual capacity; literacy and ethnic background.

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1.253 The Aboriginal Program Facilitation Unit (APFU) was recently established to improve treatment program delivery. The aim of the APFU is to provide culturally meaningful, relevant and appropriate treatment programs to the population of Aboriginal offenders such as

- Indigenous Men Managing Anger and Violence
- Indigenous Family Violence; and
- Indigenous Medium Sex Offender Program.

1.254 The Western Australia Department of Corrective Services has also implemented a number of strategies to improve delivery of treatment programs. The Department has procured an Indigenous Family Violence program from the Northern Territory to support the Family Violence Court.

1.255 Further, the Department is currently developing Ngurrakutu ('going home'), a pilot program specifically for incarcerated Indigenous men from the Western Desert region of Western Australia. This program recognises that a 'one size fits all' approach does not work and tailors specific program needs to the individual region.

1.256 The Department of Corrective Services has recently introduced further programs for Indigenous offenders. An Indigenous Cognitive Skills program for men and women; and the provision of a women's substance use program.

1.257 For 2008–09, Western Australian offender programs increased by 62% from the previous financial year, with 1237 prison offenders enrolled in programs. Of these, 652 participants were of Indigenous background.

### ***Post Release Programs***

1.258 Western Australia has a range of post release offender programs. There are programs addressing sexual offending, emotional management, Indigenous family violence and substance misuse.

1.259 Offenders can be subject to either court-based sanctions or serving their parole order. The majority of programs are undertaken in the Perth metropolitan area. Regional programs are also conducted in Bunbury and Geraldton.

1.260 Offenders are either referred by the Community Corrections Officer as part of a court order or via the Barndimalgu Court.

1.261 Western Australia also offers an Indigenous specific program delivered in the community; the Indigenous Family Violence (IFV) program. This program was developed in the Northern Territory. It is a 50 hour group based program facilitated by Indigenous facilitators. In 2008/09, there were 882 referrals to undertake a community program.

1.262 To evaluate the success of these programs, Western Australia has adopted a three stage offender program evaluation strategy

1.263 Western Australia measures long term impact of programs primarily through recidivism and repeat convictions. Offender Services' information systems provide the means by which an offender's characteristics, program completion and recidivism data are collected.

1.264 A number of specific programs are being evaluated during the 2009–10 period. If programs are found to no longer meet treatment needs of target groups, programs are discontinued, modified or enhanced.

### ***Other Relevant Correctional Programs***

1.265 There are also a range of other programs that the Western Australian Government runs. This includes:

- The Prisoner Employment Program. This program is designed to provide prisoners with the opportunity to participate in employment related activities.
- Prison Counselling Service which provides crisis intervention to all prisoners.
- Peer Support and Suicide Prevention strategies maintain peer support structure and relationships within the prison environment.
- The Aboriginal Visitors Scheme operates in all Western Australia prisons to reduce the likelihood of Aboriginal deaths in custody by providing culturally appropriate counselling; adequate support and referral services; and ensures that Aboriginal people are treated in a fair and humane manner whilst incarcerated.

1.266 Western Australia also has a number of on the ground staff to work with regional and remote Indigenous offenders. Community Corrections Officers and Juvenile Justice Officers provide supervision in remote communities while Community Supervision Agreements Officers focus on developing culturally appropriate supervision options for the management of Aboriginal offenders. Regional Community Conferencing Coordinators provide diversionary options through community conferencing for Indigenous youth in remote communities and develop capacity for selected people in communities to run community conferences. There are also Sheriff/Community Development Officers who assist the Sheriff's Office with effective delivery of justice services to Indigenous Australians.

1.267 Most of the programs in Western Australia are funded as part of annual departmental appropriations.

## **Northern Territory**

### ***Specific Courts for Indigenous Offenders***

1.268 The Northern Territory does not have any courts that are Indigenous specific. The Community Court recognises that in some cases, community, cultural or other factors play a significant role in reaching a sentencing outcome which is more

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beneficial to the community. This is not restricted to Indigenous defendants although they are the principles users of this Court.

1.269 The Community Court can sit anywhere that magistrates sit throughout the Northern Territory.

### ***Non-Custodial Sentencing Options***

1.270 The Northern Territory offers a number of non-custodial sentencing options. These include:

- Alcohol Court. An Alcohol Court can impose Alcohol Intervention Orders (AIO) or Prohibition Orders. An AIO is not a sentence. It is not enforceable unless it is linked to bail conditions or conditions of a sentence. An AIO consists of a terms of imprisonment of up to two years that is fully or partially suspended and a treatment and supervision component of up to 12 months. Standard conditions involve abstaining from alcohol and undertaking specific treatment.
- Court Referral and Evaluation for Drug Intervention Program (CREDIT) is a 12 week bail (pre-sentence) program. This is designed to divert offenders whose charges are illicit drug related into treatment. There is no specific legislative basis for this program, but clients who do well on the program are likely to receive a significant reduction in their sentence. There are pre-conditions for being able to undertake the treatment including being Darwin based.
- Community Based Supervised Orders. The Northern Territory Community Corrections provides case management services for offenders based in the community on supervised orders. These services are not Indigenous specific but a large proportion of users are Indigenous.

1.271 NTCC often refers offenders to external community-based service providers usually at no cost. The cost of NTCC case management services are calculated at \$30.40 per offender per day for the 2008–09 financial year.

### ***Custodial Rehabilitation and Therapeutic Correction Programs***

1.272 There are a number of custodial rehabilitation and therapeutic correction programs offered to offenders in the Northern Territory. Programs provided by the Northern Territory Correctional Services (NTCS) include: Alcohol Program; Illicit Drug Program; Cognitive Services/Victim Awareness Program; Anger Management Program; Sex Offender Treatment Program and Individual Treatment Intervention Program.

1.273 The NTCS also offer an Indigenous Family Violent Offender Program that is provided both in the adult custodial facilities and the community. It is delivered in 22 remote communities and in regional centres. In 2008–09 124 people completed the program. Feedback is provided through six and 12 month interviews.

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1.274 In 2009, NTCS engaged external consultants to develop an evaluation framework for therapeutic programs.

### ***Post Release Programs***

1.275 The Northern Territory, through Mission Australia, has developed a reintegration service. This commenced at the end of January 2010 in Darwin Correctional Centre and Alice Springs Correctional Centre. This service provides one full time case worker for each corrections centre to provide a case managed post release support service for prisoners and juvenile offenders on their release from custody.

1.276 This has the aim of smooth reintegration into the community with a strong case management model that builds on the strengths of participants to assist them in overcoming barriers to re-integration and reduce recidivism.

1.277 The service timeframe is up to six months. The service is also mobile and will participate in and facilitate the development of reintegration plans, involving families and support networks/agencies.

### ***Other Relevant Correctional Programs***

1.278 An Elders Visiting Program has been developed in the Northern Territory. This program commenced in 2005 and operates in the Darwin Correctional Centre and Alice Springs Correctional Centre. This program recognises that cultural contact with Indigenous Elders can improve the reintegration prospects of Indigenous offenders by maintaining links to community and culture while in prison. Elders also provide a valuable support service to correctional centre staff. They provide advice to inmates on the issues that they will face on release from prison. Elders involved with this program are committed to addressing the negative impact that high rate of Indigenous imprisonment is having upon community values and culture.

1.279 The NTCS is working with Batchelor Institute Indigenous Tertiary Education to conduct a program evaluation of the Elder Visiting Program.

## **New South Wales**

### ***Specific Courts for Indigenous Offenders***

1.280 New South Wales offers a Circle Sentencing Program. This program involves Indigenous Elders and other respected members of the Indigenous community offering advice to the Magistrate on appropriate sentencing options for Indigenous offenders. The Circle Sentencing Program also provides an opportunity for Indigenous leaders to confront the offender about their behaviour and identify the underlying and contributing factors that lead to the offending.

1.281 There are currently 10 Circle Sentencing locations around New South Wales: Armidale, Bourke, Brewarrina, Dubbo, Kempsey, Nambucca Valley, Lismore, Mt Druitt, Nowra and Walgett.

1.282 Aboriginal Community Justice Groups play an important role in determining whether or not offenders would be suitable for participation in Circle Sentencing. A unique element of the Circle Sentencing is the attention given to attracting panel members who have a direct relationship, respect and understanding of the offender.

1.283 In 2008–09, there were 157 Circle Sentencing matters finalised. The New South Wales Government has provided \$1.2 million to support the program in 2009–10. Circle Sentencing was evaluated in 2007 and a range of strategies has been implemented to improve the program. Further, an in-depth evaluation of re-offending in the Nowra Circle Court for non-family violence was conducted in November 2009, outlining positive results in terms of a reduction in repeat offending.

### *Non-Custodial Sentencing Options*

1.284 New South Wales offers a range of non-custodial sentencing options. Most recently, throughout 2009, the Department of Justice and Attorney General held regional conferences with Aboriginal Community Justice Groups. There are 20 Aboriginal Community Justice Groups in New South Wales. These forums are an opportunity for members to make recommendations to the government on priority issues impacting Aboriginal participation in the criminal justice system.

1.285 New South Wales also run a range of diversionary programs aimed at diverting offenders from custody and dealing with the underlying causes of offending. These include:

- The Magistrates Early Referral Into Treatment (MERIT) program. This program provides the opportunity for adult defendants with drug problems to work towards rehabilitation as part of the bail process. The MERIT program currently operates at 63 Local Courts. It is available to more than 80% of the New South Wales Local Court users. In 2008–09, 1857 defendants participated in the MERIT program with 881 successfully completing the program. 19% of these were Indigenous.
- Youth Drug and Alcohol Court (YDAC). YDAC aims to rehabilitate young offenders with alcohol and drug problems through judicial and therapeutic interventions. This allows intensive drug and alcohol treatments prior to sentencing. It aims to break the drug and crime cycle and address health and welfare issues. In 2008–09, there were 48 participants in the YDAC of who 10 (21%) were Indigenous.
- The Drug Court of New South Wales supervises the community-based rehabilitation of drug-dependent offenders. It aims to assist non-violent offenders to overcome both their drug dependence and criminal offending. The Court is governed by legislation (the Drug Court Act and Regulation). Each Drug Court program is specifically designed to address the offenders'



needs. The Court can give rewards and impose sanctions on a participant based on their progress. After 6 months, a non-custodial sentence can be imposed. In 2008–09 there were 149 participants in the Drug Court program. 14% were identified as Indigenous.

- Forum sentencing is a restorative justice program that brings together the offender and victim(s) with a facilitator, support people, police and other people impacted by the crime. Discussions focus on what happened, how people were affected and to develop an intervention plan for the offender. In 2009, 167 Forums took place. Ten of these forums were with Indigenous offenders.
- The Court Referral of Eligible Defendants into Treatment (CREDIT) program targets adult defendants at local courts who are motivated to address issues (directly or indirectly) that led to their offending behaviour. Participants are offered access to education, training, treatment, rehabilitation or social welfare assistance. Progress on the program is reported back to the court to inform sentencing. This program is currently in a trial phase. Since commencing in August 2009, 121 referrals have been made to the program. 33 were for Indigenous defendants. Of the 121 referrals 64 defendants entered the program. A future evaluation will be conducted to consider if the program is reducing recidivism levels and the effectiveness on certain types of offenders.

## **Victoria**

### ***Specific Courts for Indigenous Offenders***

1.286 Victoria has a range of specific courts for Indigenous offenders:

- Koori courts are designed to address Indigenous over-representation in the justice system and reduce alienation within the Court sentencing process. This is done by providing a culturally sensitive court environment. Courts have been established at Broadmeadows, Shepparton, Warrnambool, Mildura, Moe/La Trobe Valley, Barinsdale and Swan Hill. Koori courts are for Indigenous offenders.
- Koori Children's courts operate in Mildura and Melbourne.

### ***Non-Custodial Sentencing Options***

1.287 Victoria offers a range of non custodial sentencing options. These include:

- The Indigenous Community Corrections Officer Program provides culturally sensitive supervision on Indigenous offenders. This program provides for six Indigenous Community Corrections Officers to develop and maintain relationships between the Community Correctional Services and the Indigenous community. It aims to divert Indigenous people from more serious contact with the correctional system.

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- The Koori Offender Mentoring and Support Program is designed to reduce the number of Indigenous offenders breaching Community Based Orders. This program utilises training and mentoring to Indigenous offenders so that they can successfully complete their orders.
  - The Local Justice Worker Programs employs local justice workers in ten Indigenous community organisations. These workers support Indigenous offenders to foster positive relationships community and justice agencies such as the Sheriff's Office and Community Corrections.
  - The Koori Youth Justice Program operates in 15 locations and provides diversionary and rehabilitation services for young Indigenous people on statutory youth justice orders or who are at risk of entering the youth criminal justice system.
  - The Koori Intensive Bail Support Program supports young Indigenous people from the adult justice system and Childrens Court (on deferral of sentence status) who are at high risk of breaching bail and/or re-offending. The program operates in 5 regions in Victoria. It provides outreach services to support young people's compliance with bail conditions and facilitates referrals/access to accommodation, community-based and culturally specific support.
  - The Wulgunggo Ngalu Learning Place in South Gippsland is a residential diversionary facility for Indigenous men on community-based orders. It supports completion of community-based orders while learning life skills and reducing the risk of re-offending. An individual case management plan addresses particular needs. 63 men have completed the program.

### ***Custodial Rehabilitation and Therapeutic Correction Programs***

1.288 Victoria offers several custodial rehabilitation and therapeutic correctional programs. These include:

- An Aboriginal Cultural Immersion Program which encourages Indigenous prisoners to connect or re-connect with their culture. This is an intensive week-long program which has had high participation rates.
- Marumali is an intensive five day program. This focuses on healing long-standing trauma and loss associated with stolen generation issues such as dispossession from land and forced removal from communities. The program deals with loss of identity and a number of underlying issues such as education, employment and health outcomes.
- The Koori Cognitive Skills Program is a problem solving program based on cognitive behavioural therapy. Piloted in 2005, this program is continually being rolled out in prisons and correctional centres.
- The Dardi Munwurro Indigenous Men's Behaviour Change Program is specifically structured to assist Indigenous men to take personal responsibility

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and be accountable for their life situation and behaviour. This program deals with family violence issues and family/community leadership.

### ***Post Release Programs***

1.289 Victoria offers some post release programs that provide support to Indigenous Australians to reduce re-offending:

- The Koori Intensive Pre and Post Release Program which aims to reduce the rate at which Indigenous young people re-offend by providing support to people exiting youth justice custodial centres. The program provides intensive outreach services to directly support compliance with youth parole or residential orders. It also assists with referrals to specific services.
- The Koori Kconnect Program provides pre- and post-release support to Indigenous men and women exiting prison and returning to the community. A case worker is assigned 8 to 10 weeks prior to release. Support can last up to twelve months.

### ***Other relevant programs***

1.290 Victoria has a range of other correctional programs that assist Indigenous Australians. For example, the Aboriginal Wellbeing Officers in prisons assist Indigenous prisoners to understand prison processes and the services available to them. They also provide linkages between the prison and the Indigenous community.

1.291 To further strengthen connections with family, the Aboriginal Family Visits Program provides travel and accommodation assistance to families of Indigenous prisoners to enable them to visit family members in custody. In 2008–09, more than 60 Indigenous families were assisted.

1.292 Further, the Yannabil Program is a visitors program for young Indigenous people in Victoria's youth justice custodial centres. There are currently 18 visits per year under this program.

## **Tasmania**

### ***Specific Courts for Indigenous Offenders***

1.293 Tasmania does not have any specific courts for Indigenous communities.

### ***Non-Custodial Sentencing Options***

1.294 There are no specific non-custodial sentencing options for Indigenous people. However, the Tasmanian Government is currently developing a range of alternative options to custodial sentencing. Indigenous Tasmanians are eligible for the court mandated diversion programs for crimes relating to drugs.

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### ***Custodial Rehabilitation and Therapeutic Correction Programs***

1.295 There are no Indigenous specific offender rehabilitation or therapeutic corrections programs in Tasmania. A range of general programs exist such as sex offending; general offending; drug and alcohol related offending and violent and family violence offending throughout the Tasmania Prison Service and Community Corrections.

### ***Other Relevant Correctional Programs***

1.296 The Tasmanian Prison Service employs an Aboriginal Liaison Officer who specifically consults with the community sector for the provision of rehabilitative services and culturally sensitive programs that are offered to Indigenous persons. This is in addition to the suite of general reintegration programs.

1.297 Colony 47, a non-governmental organisation, runs Cultural Connection Camps for inmates of the Minimum Security facility. The camps consist of two to three day camps for visiting specific Aboriginal cultural sites with Aboriginal elders. To date, eight participants have completed the camps.

### **The Australian Capital Territory**

1.298 While the Australian Capital Territory does not offer any discreet Indigenous programs a model of co-facilitation, using 'cultural brokers' or current Indigenous staff, is under development. When developed it is expected that this will help Indigenous offenders have exposure to culturally appropriate programs.

### ***Specific Courts for Indigenous Offenders***

1.299 The Australian Capital Territory established the Ngambra Circle Sentencing Court in April 2004. This court was established to assist in the sentencing of Indigenous offenders who plead guilty to an offence that can be dealt with to finality in the Magistrates Court. This court sits with up to four members of the local Indigenous community to determine a culturally appropriate sentence for the offenders. The Magistrate retains the final discretion in sentencing. There have been 64 matters finalised through this court since commencement.

### ***Non-Custodial Sentencing Options***

1.300 The *ACT Crimes (Sentencing) Act 2005* allows for non-custodial sentences. This includes Good Behaviour Orders; Drivers licence disqualifications for motor vehicle theft; non conviction orders and reparation orders.

### ***Custodial Rehabilitation and Therapeutic Programs***

1.301 The ACT's first prison opened in March 2009. There are nine therapeutic and rehabilitation programs offered at the prison such as an Adult Sex Offender Program; First Steps to Anger Management Program; AOD First Steps Relapse Prevention Program; Cognitive Self Change; Violent Offender Program; Solaris Therapeutic

Community care; Personal Effectiveness Program; Health and Wellbeing Programs as well as Vocational and Education Training programs.

1.302 From 30 March 2009 to 31 December 2009, 78 out of 408 prisoners undertaking these programs were Indigenous.

1.303 There are also three community based programs – the Adult Sex Offender program; Cognitive Self Change; and the Family Violence Self Change Program. In the 2008–09 period, 8 out of 113 participants were Indigenous.

1.304 The Australian Capital Territory also has periodic detention centre programs that include Cognitive Self Change; the Sober Driver Program; First Steps to Anger Management and the AOD First Steps Relapse Prevention Program. In the 2008–09 financial year, 1 out of 62 people participating in these programs was Indigenous.

1.305 Most of the prisoner and offender programs in the Australian Capital Territory are funded through the general departmental appropriation.

## **South Australia**

### ***Specific courts for Indigenous offenders***

1.306 The South Australian Government operates two Indigenous-specific courts. In 2009, 20 offenders participated in the Murray Bridge Nunga Court, while 39 offenders participated in the Port Augusta Aboriginal Sentencing Court. The courts functioned in a similar manner to those in other states. No evaluation of the two courts has been conducted.

1.307 South Australia also allows for any criminal court, with the defendant's consent, to convene an Aboriginal Sentencing Conference. Participants include the Judicial Officer, defendant, prosecutor, Elders, family members, victims and support persons, who meet in a more informal conference setting to openly and directly discuss matters affecting the defendant's offending behaviour and rehabilitation. Two such conferences were conducted in regional or remote locations in 2009.

1.308 The South Australian Government also established an Aboriginal Conferencing Program in Port Lincoln in 2007. 10 Aboriginal offenders participated in the program in 2009. An evaluation of the pilot project found that most stakeholders believed the program was meeting aims such as involvement of the Aboriginal community, awareness by defendants of the harm done by their offending, provision of restorative justice to victims and the facilitation of appropriate and constructive sentencing by magistrates.

1.309 Through the program, an Aboriginal Conference prior to the sentencing hearing is available to Aboriginal defendants who reside in Port Lincoln, and who plead guilty. Aboriginal Conferences are facilitated by a Conferencing Coordinator and an Aboriginal Justice Officer (A.J.O.) and involve a Police Prosecutor, defendant(s), victim(s), support persons and Elders or respected members of the local

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Aboriginal Community or both. The conference provides an opportunity to acknowledge the harm done to the victim and to contribute to the development of responses to the offending behaviour. A report of the conference is then provided to the Magistrate to assist in determining an appropriate sentence.

### ***Non-Custodial Sentencing Options***

1.310 The Remote Areas Aboriginal Family Violence Program operates in the NPY Lands in Central Australia. It operates as part of the Cross-Border Justice Project with the Western Australian and Northern Territory Governments.

1.311 The project aims to reduce the incidence of physical and psychological harm in Aboriginal communities of Central Australia by developing and delivering culturally and linguistically appropriate programs to address issues of family violence, anger management and substance misuse. The program is targeted at adult Aboriginal offenders, particularly those under community supervision by correctional agencies, and those referred on a non-mandated basis by other agencies, such as police or health departments.

1.312 The project recognises that the cultural constructs of 'anger', 'violence' and other such concepts in traditional society differs from that of many non-Aboriginal groups, but that their management generally needs to be compatible with Australian legal systems. The primary goal of the project is to stop the violence, have men take responsibility for their actions, develop alternatives to violence and consequently reduce the number of Indigenous men being imprisoned for violence related offences.

1.313 The project was evaluated in February 2009. The South Australian Government reported to the committee that, of 187 participants, more than 70 per cent have not re-offended as a consequence of being better able to restrain their violence.

1.314 The South Australian Government also provides a Remote Areas Community Corrections Service to the APY Lands and Yalata through 'in-reach' and outreach services located in Marla and Coober Pedy. Department of Corrective Services (DCS) staff attend courts and provide supervision via telephone or during field trips to improve the availability of non-custodial sentencing options. Additionally, the Community Service Work Team, based in Port Augusta, visits APY Lands communities to supervise court-imposed Community Service Orders. The initiative has boosted the number of community service hours completed each year from 800 to 3000 hours.

1.315 Home detention is offered to approved Aboriginal offenders as a diversion from traditional incarceration. It is offered to suitable bailees and prisoners transitioning to parole. It mitigates the negative effects of incarceration for Aboriginal people by reducing stressors such as separation from community and family by locating the prisoner in a more congenial environment.

1.316 Additionally, therapeutic programs are delivered both in custody and in the community. These programs are described in the next section.

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### ***Custodial Rehabilitation and Therapeutic Programs***

DCS provides Aboriginal Education programs in custody through its Registered Training Organisation, VTEC-SA. In 2007–08, participants completed 397 units of competency in literacy and numeracy, computing and in-house programs and 366 completed units in areas such as first-aid and forklift operations. The completion rate for all participants was 46 per cent. DCS does not routinely track offenders upon release, and hence cannot provide statistics on employment outcomes or recidivism.

1.317 The DCS Rehabilitation Programs Branch provides intervention programs for Aboriginal offenders run by Aboriginal staff (Aboriginal Programs Officers). Programs include Anger Management, Victim Awareness, Ending Offending and Grief and Loss. They are delivered in custody (Mabilong Prison, Port Augusta Prison, and Adelaide Women's Prison) and in the community (Port Adelaide Community Corrections).

1.318 General data on participation in core custodial-based programs show 114 Aboriginal prisoners commenced such programs in 2009, with the majority of these being alcohol and drug intervention programs. Indigenous-specific data for non-custodial programs is not available.

1.319 Aboriginal Programs Officers also co-facilitate the Sexual Behaviours Clinic (S.RC.) and the Violence Prevention Program (V.P.P.) in order to ensure that those programs are culturally responsive to the Indigenous participants of those group based programs. These programs are aimed at increasing their responsibility and minimising the risk of re-offending. The programs target dynamic risk factors in treatment, such as reducing thinking errors, developing victim empathy, controlling sexual arousal, improving relationships with others including females, forming support systems and improving mood states.

1.320 The South Australian Government informed the committee that following a review of core programs against the Australian Offender Program Standards, consideration of its evaluation work and completed research, it would be developing a new general offending program called 'Making Changes' in place of existing programs.

### **Queensland**

1.321 A response to the committee's audit of programs was sought from Queensland, but as of 24 March 2010, had not been received.

## Conclusion

1.322 This discussion paper is intended to inform the committee's activities rather than to draw definite conclusions. However, the data clearly shows that Indigenous Australian's contact with the criminal justice system is more frequent than non-Indigenous Australians, is the result of complex determinants and features an ever-increasing incarceration rate.

1.323 The impact this has on Indigenous Australians is significant. Indigenous offending and incarceration is intertwined with a range of complex issues that need to be addressed holistically – from mental health; alcohol consumption and violence to systemic unemployment and lack of opportunities in Indigenous communities. Only then can some progress be made to reduce such dismal statistics.

1.324 This paper highlights just some of the practical measures that Australian governments are undertaking to reduce offending and recidivism by Indigenous (and non-Indigenous) Australians. Alternative approaches to the 'traditional' criminal justice system such as innovative rehabilitation programs and providing for post-correctional system care are evidence based ways to reduce the numbers of Indigenous Australians in incarceration.

1.325 There is no single solution for fixing the problem of Indigenous incarceration, but there are many practical measures that can be utilised to incrementally improve the situation for all Indigenous Australians.



# Appendix 1

## Offence Categories

### Homicide and related offences

- Murder
- Attempted murder
- Manslaughter and driving causing death

### Acts intended to cause injury

- Assault
- Other acts intended to cause injury

### Sexual assault and related offences

- Sexual assault
- Non-assaultive sexual offences

### Dangerous or negligent acts endangering persons

- Dangerous or negligent operation of a vehicle
- Other dangerous or negligent acts endangering persons

### Abduction, harassment and other offences against the person

- Abduction and kidnapping
- Deprivation of liberty/false imprisonment
- Harassment and threatening behaviour

### Robbery, extortion and related offences

- Robbery
- Blackmail and extortion

### Unlawful entry with intent/burglary, break and enter

- Unlawful entry with intent/burglary, break and enter

### Theft and related offences

- Motor vehicle theft and related offences
- Theft (except motor vehicles)
- Receive or handle proceeds of crime
- Illegal use of property (except motor vehicles)

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Fraud, deception and related offences

- Obtain benefit by deception
- Forgery and counterfeiting
- Deceptive business/government practices
- Other fraud and deception offences

Illicit drug offences

- Import or export illicit drugs
- Deal or traffic in illicit drugs
- Manufacture or cultivate illicit drugs
- Possess and/or use illicit drugs
- Other illicit drug offences

Prohibited and regulated weapons and explosives offences

- Prohibited weapons/explosives offences
- Regulated weapons/explosives offences

Property damage and environmental pollution

- Property damage
- Environmental pollution

Public order offences

- Disorderly conduct
- Regulated public order offences
- Offensive conduct

Traffic and vehicle regulatory offences

- Driver licence offences
- Vehicle registration and roadworthiness offences
- Regulatory driving offences
- Pedestrian offences

Offences against justice procedures, government security and government operations

- Breach of custodial order offences
- Breach of community-based orders
- Breach of violence and non-violence orders
- Offences against government operations

- Offences against government security
- Offences against justice procedures

#### Miscellaneous offences

- Defamation, libel and privacy offences
- Public health and safety offences
- Commercial/industry/financial regulation

#### Other miscellaneous offences